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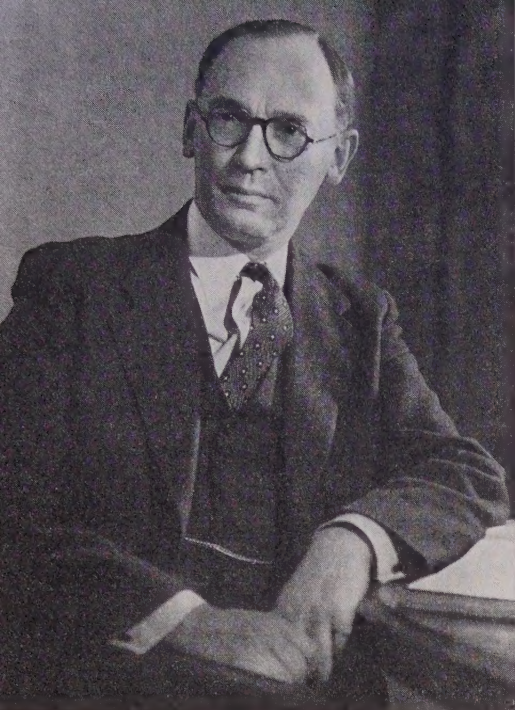
CONTENTS

GENERAL SECTION

Message from the President of the Union on the Tenth Anniversary of the EBU	2
In the Service of Truth and Human Progress, by G. M. BOVAY	4
The Broadcasting Foundation of America, by Basil THORNTON	7
Staff Training in the BBC, by Pennethorne HUGHES	9
Television in India, by J. C. MATHUR	13
Cultural and Educational Television Programmes of Nippon Hoso Kyokai, by Tadashi YOSHIDA	15
The Role of Broadcasting in the Life of the Peoples of the Pacific, by M. ESPINASSE	18
News and Information	
The British Commonwealth Broadcasting Conference, Denmark, Ireland, Japan, New Zealand, Norway, Sweden, Switzerland, United States	21

LEGAL SECTION

Songs, Plagiarism and Coincidence, by Paolo GRECO	26
News and Information	
Denmark, Switzerland	31
Book Reviews	35



MESSAGE FROM THE PRESIDENT OF THE UNION ON THE TENTH ANNIVERSARY OF THE E.B.U.

In May 1950, as first President of the European Broadcasting Union which had been founded in February of that year at Torquay, I was happy to introduce the Union's Bulletin to its readers. In those introductory remarks, I was already able to say that the Union had rapidly become an organised and effective international body, ready to play its part in an important domain where friendly cooperation was essential for development.

Now, ten years later, I am proud to acknowledge that this description has been fully vindicated. In all fields of broadcasting—administrative, programme, legal and technical—the Union has fulfilled its early promise and has worked closely and amicably with many other international organisations in the settlement of the complex problems confronting radio and television throughout the world.

At its foundation, the Union had twenty-one members; the intervening years have seen its numbers swell to forty-five—twenty-eight active members from twenty-six countries in the European Broadcasting Zone and seventeen associate members from eleven countries outside this area. They have all kept in constant touch with each other through the Union's varied activities which have been directed towards a steady development in the interest and efficiency of broadcasting.

In this issue of our publication I am glad to have the opportunity of reviewing, however briefly, some of the achievements of our first decade of programme and legal work which is coordinated at our Administrative Office in Geneva.

The activities of the Union in relation to programmes in Sound and Television are mainly directed towards facilitating and increasing their exchange, and it is here that our Programme Committee and its various working groups are concerned. In Sound the intervention of the Union is rarely required because there are few obstacles to exchanges made directly between members. It is in Television that the Union has been most constantly and successfully active, and the Programme Committee, cooperating with the Technical and Legal Committees, has played a notable part in bringing to the audiences in an increasing number of countries the best that individual organisations can produce, and the highlights of activities in sport, ceremony and spectacle. Eurovision, which is the creation of the Union, is perhaps the greatest single advance that has been made since we were founded ten years ago.

There are other activities sponsored by the Programme Committee which involve the creation of programmes that would not otherwise exist. For example, in Eurovision a working group has brought to the screen special series on film such as: High Places of the Mind, Scientific Curiosities, Le Cinéma dans le Monde, Folk Music Round the World, and Architecture. Then we have created the Grand Prix of the Eurovision Song Contest,

and the Eurovision Grand Prix of Television Films. Finally, much progress has taken place under the aegis of the Union in making possible the rapid dissemination throughout the Eurovision network of visual news items.

The Union has also been active in collaboration with other international bodies such as UNESCO, the International Labour Organisation, the World Health Organisation, the International University of the Air and the International Film and Television Council, to mention but a few.

The legal activities of the Union are divided into two sectors that converge but do not entirely meet. The EBU's Legal Service acts as adviser to the member organisations and its task is to assist them when contracts are being negotiated that may have repercussions at the international level, during the preparation of legislation in their own countries, and in the event of disputes at law arising between these organisations and third parties. Throughout the ten years of its existence, this Service has on many occasions helped members of the Union and this assistance is so highly valued by the broadcasting organisations that few new contracts or new laws on copyright or related subjects are passed without the EBU Legal Service being invited to collaborate with the organisation concerned.

This Service also acts as the secretariat of the Legal Committee and thus ensures the continuity of the legal work of the Union in another sphere. The Legal Committee, which has worked steadily since the founding of the Union and whose Bureau meets frequently, may rightly claim to have played its part in bringing about a standardisation of the relations between the members and the groups of authors, performers, publishers, record manufacturers and others, a standardisation towards which it has contributed by preparing standard contracts that are widely used throughout the Union. Since the start of Eurovision, these exchanges have been a source of constant preoccupation to the Legal Committee and it was this Committee that created the legal conditions necessary for relays on television of protected works, programmes with the participation of performers, and news items belonging to press agencies, among others. The leading part taken by the Legal Committee in the drafting of the two international agreements under the auspices of the Council of Europe is linked with the question of international exchanges whose scope and volume the Committee is constantly endeavouring to widen and increase. Its relations with the Berne Union, UNESCO, the International Labour Organisation, the major international authors' organisations and the international federations of performers and record manufacturers have also played their part in giving the EBU Legal Committee a far from negligible position on the international chessboard where the fate of international protection of copyright and ancillary rights is decided. It is most significant that the 10th anniversary of the Union coincides with an important meeting organised by the Legal Committee at which the representatives of the Committee are to meet the international representatives of the authors' societies. This meeting is characteristic of the spirit of cooperation and understanding in which the Committee is working to ensure that broadcasts will conform to the law wherever they may be heard and wherever they may be relayed.

This rapid survey of ten years of programme and legal activity will suffice to show the increasing importance of our work and the need for continued cooperation on all sides. Our task has been made easier by the enthusiastic support given to us by all our members and we are glad to be assured of their continuing interest in the years to come. With their friendly help to sustain us, we can look forward with confidence to the challenge of the next decade.

Jan Jacob

GENERAL SECTION

IN THE SERVICE OF TRUTH AND HUMAN PROGRESS

by G. M. BOVAY

Radio Section, World Health Organisation

"Informed opinion and active cooperation on the part of the public are of the utmost importance in the improvement of the health of the people." This is one of the principles outlined in the Constitution of the World Health Organisation (WHO), one of the United Nations specialised agencies like Unesco, the Food and Agriculture Organisation (FAO) or the International Atomic Energy Agency, with whom it maintains profitable relations. The WHO now has 90 member countries, a fact which amply demonstrates its universal nature.

It is only right, then, seeing that the budget of these organisations is made up of the contributions of the member states belonging to them, that the authorities and the peoples of these states—in other words, practically every country in the globe and more than three quarters of the total world population—should be kept informed about their work which benefits almost the whole of humanity in one way or another.

That is why these institutions have divisions or departments of public information which try to satisfy the requirements laid down by the principles referred to above. These services have to observe a certain strictness and caution as regards the information they publish, and this makes it all the more valuable.

To enable the WHO's Division of Public Information to perform its task of informing the world of the progress made by governments in the field of public health with the assistance of the Organisation, the Division, which is under the direction of Mr. Joseph Handler and has its headquarters at the Palais des Nations in Geneva, makes use of the classic information media—Press, radio and the so-called visual media comprising the cinema, television, photography, exhibitions, etc. The role of the information services is to publicise the many different aspects of WHO's international activity. To mention only a few: the battle against the great scourges of humanity (malaria, venereal diseases, leprosy, tuberculosis, trachoma, etc.), the development of a new vaccine, the progress of epidemics, the efforts to improve living conditions and educate peoples, medical research, the ravages of the new diseases afflicting the human race (cancer, cardio-vascular disease,

radioactive contamination), the increase in mental illness, the abuse of certain so-called wonder drugs, etc. These are all subjects of growing importance to the public, for people are beginning to feel increasingly bound to and dependent upon their distant fellow-beings, African or Asiatic, now accessible by plane.

It is obvious that thanks to modern, rapid methods of transport disease now knows no frontiers, and although some forms are dying out in certain parts of the globe, they are re-appearing in other parts, posing different problems. Then again, new illnesses are spreading, demanding new techniques and new ways of fighting them. Under the general scheme of aid to the under-developed countries, one of man's great struggles today, both from the humanitarian and from the economic and social point of view, is undoubtedly the struggle against disease in every form.

The aim of the WHO Division of Public Information is to describe this struggle, make it live in the imagination and keep the public informed about its progress.

Readers of this Review are of course primarily concerned with the problems of radio and television, and so these two aspects in particular are dealt with here.

As the WHO information services have no real means of production themselves, a special effort must be made to encourage experts in the field of public information to make use of the material these services can make available to them.

* * *

In the field of **television**, WHO information services have succeeded in spite of lack of funds in producing unaided or in cooperation with others a certain number of films which they make a point of distributing throughout the world because of their international character. The title of the film *People like Maria*, produced for the 10th anniversary of WHO by the distinguished film director Harry Watt, shows that it is addressed to people in every country to whom nothing human is strange. Thanks to the interest and support of the European Broad-

casting Union, this film has been shown on television in 11 European countries, and it has also been shown in the United States, Canada and the USSR. It has been estimated that in this way it has been able to reach an audience of some 26 million people.

Another film is being prepared dealing with the vast problem of water supplies throughout the world. It is to be produced by WHO on behalf of the United Nations, but it will probably not be finished before 1961.

Here is a brief description of the films produced to date by WHO.

We have the cure. *Summary:* This film deals with mass campaigns against treponemal diseases. The introduction presents some facts concerning the distribution of syphilis, yaws, pinta, and bejel and explains how all of these diseases can be treated by injections of long-acting penicillin and cured.

After an interview with the head of the Venereal Diseases and Treponematoses Section of the World Health Organisation, the film shows the steps necessary to organise mass campaigns. Scenes are shown from many lands including Haiti, the Philippines, Ethiopia and Indonesia.

The point is made that the struggle against these diseases is an international problem, and that millions of people, particularly in the tropical regions which are heavily afflicted by yaws, benefit from these campaigns.

Challenge of malaria. *Summary:* This film was produced to explain the necessity to eradicate malaria in areas where this is possible.

It is composed of three parts: a summary of the action carried on in Iraq, a statement of the problem of mosquito resistance to insecticides with a demonstration in laboratory of testing for resistance, and finally a diagrammatic explanation of how the eradication programme should work.

The film is non-technical and can be used for showing to persons who have no specialised knowledge of the subject.

To your health. *Summary:* This film is based upon the publications of the World Health Organisation's Expert Committee on Alcohol and Alcoholism and was supervised by Professor E. M. Jellinek. It was made to encourage objective discussion of the problems of alcohol and alcoholism. It shows in cartoon form the action of alcohol on the human body, and the relationship of the custom of drinking to historical and cultural factors in society; and it includes a description of the onset of the disease of alcoholism as it occurs in some individuals.

People like Maria. *Summary:* This film was made in 1958 to celebrate the Tenth Anniversary of the World Health Organisation. The British film director, Harry Watt, made a tour of the world to find stories illustrating

the change that is taking place in the lives of millions of people thanks to medical and health assistance. The film emphasises the emergence of young people in many countries trained to work among their own people and bring the benefits of medical science to them.

Two stories in two different parts of the world are told. The first story tells of a young Bolivian nurse who goes to the High Plain of the Andes to work among the Indians and of her struggle to secure acceptance by these people. The other story shows a young health assistant trained under a WHO educational programme in Burma, his work in a village health centre, and his dramatic discovery of an outbreak of plague.

Open your eyes. *Summary:* The story of a boy who lives in the south of Morocco and who takes his sick father to a hospital in his province. In the course of the journey to the hospital and later, as he waits for his father's convalescence, the boy learns about the Moroccan Government's campaign against eye diseases and the many steps that are being taken to rid his people of trachoma and acute conjunctivitis, the two eye diseases so prevalent in his country.

Battle against leprosy. *Summary:* This is a record made by WHO's Public Information Officer in the African Regional Office describing the work in French Equatorial Africa to bring leprosy under control. Of the 150,000 persons in the country suffering from leprosy nearly all have now been found and are receiving treatment. Many of the workers in the campaign are patients in whom the disease has already been arrested.

Although the film is very simple it gives a striking picture of what is being done to put a stop to a disease which only yesterday condemned its sufferers to a lifetime of loneliness and horror.

Waters of affliction. *Summary:* In 1953 the Philippines Government requested international assistance to combat bilharziasis, a disease which afflicts three hundred thousand people in the Philippine islands. The disease is caused by a parasite which uses snails and human beings as its host at different stages of its development.

Bilharziasis abounds in areas where people have to spend much of their time working in muddy fields and in streams. The disease presents a very difficult public health problem as there is no definite cure for it, and preventing its transmission is practically impossible so long as people, snails and parasites come into contact with one another. The film shows how a team of international experts are studying this disease and seeking to find means of bringing it under control. It also shows conditions that cause the spread of the disease and a number of dramatic examples of the suffering it causes.

These films were made for the public and not for specialists in the diseases they describe. They are usually found in both French and English, and sometimes in

other languages too, and there is a special catalogue giving technical details. The films are offered to national and private television companies and may be procured on a rental basis for screening purposes. The United Nations Office of Information in New York also places at the disposal of television organisations a film library where they can find film footage for *montages* on any subject. This footage is sold at cost price and exists in black and white, 16 mm. and 35 mm. Subjects take in a wide range of activities carried out in 16 different countries by the United Nations and its specialised agencies, including WHO.

* * *

In the field of **sound radio**, WHO has a vast programme of work and its outlets are world-wide. Recordings made in Geneva are sent as far afield as Australia and New Zealand. There is a particular type of cooperation for all radio stations, depending on the audience, air-time available, language, and the subjects of interest in a given country. Generally speaking, the radio services of WHO send out:

1. press releases and a periodical entitled *World Health* describing the major health problems in the world;
2. recordings of announcements, interviews and discussions on health topics of the day, made in collaboration with the permanent staff of WHO in Geneva and experts from every country, chosen from

among the most distinguished figures in the world of medicine;

3. the fullest possible documentation on the health problems in WHO's working schedule. This information may only be had by making special application and it is intended primarily for medical and scientific correspondents as well as authors of broadcasts to schools. It may be used in conjunction with recordings on the same subject to enable these correspondents to devise their broadcast programmes.

Among the subjects now on the agenda, the following which are to be given prominence by the radio services of WHO in the coming months deserve special recommendation:

World-wide eradication of malaria, the theme suggested for the next World Health Day (7th April 1960) and the most serious health problem for almost half of the world's population;

The world's water supplies, their daily use as part of the diet and in hygiene, the supply of drinking water to underprivileged peoples, its pollution and drainage. This theme was recommended on many occasions during the last World Health Assembly. It is in fact one of the primary and most elementary "needs" of mankind;

Mental health, which is a matter of concern mainly to the economically favoured countries. January 1960 in fact saw the opening of World Mental Health Year proposed by the World Federation of that name and supported by the WHO.

Meeting between the European Broadcasting Union and the International Radio and Television Organisation (OIRT)

Representatives of the International Radio and Television Organisation (OIRT) and of the European Broadcasting Union (EBU) met at Geneva from February 3rd to 6th 1960 to examine the possibilities of interchanging radio and television programmes between the members of the two Unions.

Three groups of experts were formed to study separately the technical, juridical and programme aspects of such exchanges. Each of these groups, after extensive discussions, prepared and adopted a report which set out the possibilities of exchanges, made clear what the present difficulties were and suggested ways and means for overcoming them.

As far as is possible at the present time, steps have been taken to facilitate programme exchanges between members of the two Unions and in particular between Eurovision and Intervision.

The discussions took place in a spirit of collaboration and were inspired by a desire to achieve the object envisaged.

THE BROADCASTING FOUNDATION OF AMERICA

by *BASIL THORNTON*

Executive Director



Mr. Basil Thornton, Executive Director of the BFA, has been for 20 years with the BBC and was BBC North American representative from 1951-1955.

After 40 years of radio an organisation has been created in America which seems to be new and unique. During the war contending countries developed Overseas Services which produced and broadcast in forty languages to even more countries. Now there is hardly a country in Europe without a short wave service. But until BFA was formed, no one had reversed the process and, in addition to emitting a multilingual monologue, taken deliberate steps to help its people to listen to the voice of others. The Broadcasting Foundation of America, although ultimately to have a two-way operation, was set up to concentrate on listening and helping Americans to listen. It acts as a Voice of America in reverse. Arranging the preliminary research, thinking out the problems thereby raised, and securing "Foundation" or tax exempt status, and not least securing the finance itself, took several years. BFA finally launched into operation in July, 1958, with a battery of Ampexes and the goodwill of several European and Asian countries and some 70 American radio stations. After little more than a year it is offering programmes from 40 countries to 183 stations (the number increases daily). Most of these programmes are of music or about music. BFA's first major operation was to distribute 60 hours of concerts and operas from the Salzburg Festival in 1958 to 67 American stations. This was followed by many other "Festival" programmes; a series of programmes from the Bergen Festival, the Prague Spring Festival, the Enesco Festival from Rumania, a special Bartók Radio Festival from Budapest, four operas from Bayreuth, the Dubrovnik Festival, the whole Vienna Festival, Operas from the Two Worlds

Festival, and many fine programmes from France. Essentially BFA was distributing on tape to widely separated stations all over America the equivalent of a live rebroadcast from Europe, often with the original multilingual announcements which many listeners enjoyed, as it heightened their sense of "occasion" and made them feel they were actually present. In a community shut off by thousands of miles from other civilisations and other languages, with which, nevertheless, many of the citizens have ties, this can be an invigorating experience.

Unusual folk music came to us from India, Pakistan, Malaya, Korea and Indonesia. The Polish Universities produced a history of Polish music in 13 one-hour programmes which met with particular success in the Chicago area. The Turks sent an opera on the life of Van Gogh. A history of Chinese music, six programmes, arrived from Hong Kong. Belgium produced a panorama of Belgian music and a series of song programmes from the Congo. Finland sent a selection of modern Finnish composers. These musical survey programmes have had an enthusiastic reception from many listeners. Poetry, short stories and feature programmes came from India and Pakistan, and a series of programmes on *Myth, Legend and Music in the Isles* came from Greece.

The appreciation of music and musical performance in other lands is important, but that was not the main preoccupation of BFA, which is with spoken word programmes. It is on these that BFA expends most staff time and effort. It was early decided that rather than circulate whole series of spoken word programmes from single countries, BFA would circulate integrated series in which a number of countries would take part. A series which has been on the air for forty weeks and shows no signs of finishing is *Portraits of Cities*. Fifty half-hour portraits of major cities of the world have so far been produced, all by the country concerned, in English, and 22 countries from four continents have taken part.

Another perennial series is the *International Almanac*—a simple magazine programme on topical, cultural and human interest events, in rotation each week from Britain, Germany, France, Sweden, Japan, Italy and Holland. The colour and novelty of Japanese life makes the Japanese edition singularly attractive.

Both these programme series are now broadcast by some fifty stations across the country ranging from 50 kw free channel stations heard at night over half the

United States to small community FM stations specialising in fine music, news, and programmes with a cultural background. BFA also circulates by air mail from New York weekly press reviews from France, Holland, Sweden, Japan, India, Germany, Israel and Canada. Some go to 20, some to 40 stations according to local interest about the country concerned and its impact on foreign affairs, although some of the less powerful countries have the liveliest of comments. Circulation shows a steady rise. Some stations have found it useful to schedule these press reviews seven days a week across the board. New programmes were prepared for the winter months.

Considerable resources would be required for a single American station to maintain contact with some forty different countries, although more and more stations are enlarging the field of their foreign contacts. It is burdensome also for many of the smaller countries who wish to have some sample of their culture, life and thought exhibited on the radio in America to make a survey of circulation possibilities and set up a distributing organisation in the U.S. and to organise friendly and expert comment on the productions they may send over. So BFA acts as a natural link. Experience over the last year has shown that many countries wish to, and are able to produce attractive programmes in English for America in all states of the Union and also that among American stations there is a desire to hear more from the outside world.

The BFA operation is financed as follows. Firstly, the originating countries provide the programmes free to the Broadcasting Foundation of America. BFA member stations provide the time free. This latter is often a significant contribution as the majority of BFA's stations secure their revenues from commercial broadcasting and most of BFA's programmes may not be associated with advertising. This is a pity, as greater circulation could be secured were this not so. In the case of the spoken word programmes, BFA circulates the programmes on tapes and only charges for unreturned tapes. It was found that for musical programmes this was not a practical system for quality reproduction and altogether too expensive for BFA, such was the demand, so BFA always dubs its musical programmes on to brand new tapes and charges for the tapes at list price. After broadcasting the station erases the musical programmes and keeps the tapes for internal use. The cost of maintaining an office, staff, travel, communications, negotiations, programme criticism and programme offerings falls on BFA, and these costs are currently defrayed by a grant from the Ford Foundation. The constantly improving

quality of the productions coming from overseas as the producers get on to the swing of producing for America and assemble acceptable participants and the growing popularity of BFA's programmes in the U.S. have brought BFA to the position where programme volume and circulation is really dependent on the size of the subsidy it can afford to put into the operation. It is hoped that a sharpening of this tendency will lead BFA in time to a position where it may become more financially self-supporting than at present, although it is difficult to see how, as long as most of the programmes continue to be unassociable with advertising, stations will be prepared to do much more than release time for this public service programming.

BFA is a pipe dream of the late Lewis Hill of San Francisco's community station, KPFA—the station in the U.S. whose ideals most resemble those of BBC's Third Programme, of George E. Probst, for many years the Director of the University of Chicago *Round Table*, a network discussion programme which often indulged in international hook-ups, and of Seymour N. Siegel, Director of the Municipal Broadcasting System of New York. Its present Chairman is Samuel B. Gould, Chancellor of the University of California, Santa Barbara. Despite the background of its originators, BFA does not aim primarily at the University or Educational Radio Stations, although some of the most powerful of these are among its strongest supporters. It injects into the main stream of American communication, the commercial broadcasting station. Its programmes are kept at a lively, light, but not too light, programme level to attract the general listener, although when its spoken word programmes are broadcast together with its music on fine music stations it does enjoy a pre-selected audience.

BFA has acted as consultant to the Venezuelan Government in setting up educational television in Caracas. It is the American organisation arranging for Prix Italia entries. It conducted an international panel with invited representatives from Britain, Germany, Italy, Mexico and Japan at the annual Westinghouse Television Conference on Public Service Television attended by 250 television stations in San Francisco last September. BFA is feeling its way into television and last summer laid the research foundations for a series of television programmes about Europe. But television will present a whole new set of financial problems which need solving. Meanwhile, BFA continues as the catalyst between the American listeners who want to hear more about what goes on abroad and those all over the world who want to tell them.

STAFF TRAINING IN THE BBC

by *PENNETHORNE HUGHES*

Head of Staff Training, BBC



Mr. Pennethorne Hughes.

All major concerns are increasingly interested in training methods and practice, so that training in industry (and broadcasting is an industry) has become fashionable as well as the necessity it has always been.

The BBC started training in broadcasting method and practice in very early days—in 1936, the same year that it initiated the world's first regular daily public high-definition television service. Already there was an Engineering Training School, to deal with the special and prolonged requirements of technical education. It was realised that, as broadcasting had grown up, producers and administrators, too, must learn the basic principles and practices of their craft. Creative ability alone might produce exciting charades, but a constant output at a high standard was impossible without some co-ordination of method and planned exchanges of techniques. Learning must not now be on the job, and at the expense of the listeners. Improved ways of creating the required effects must be passed on to new producers and made available to older ones who might otherwise tend to get rusty. For broadcasting has always been flexible.

There are always new problems to be faced. The first and most obvious activity of the Staff Training Department, which has its headquarters almost opposite the famous Madame Tussaud's waxworks, remains the General Course—an introduction to broadcasting technique and Corporation practice. There are three of these courses a year, each attended by some twenty-five members of the Corporation. As the largest broadcasting organisation in the world (at all events in the cis-Curtain

world) the BBC has always been called upon for training and advice by newer organisations seeking to meet their own local problems. We have had students on General Courses from the United States, from many continental countries, from the Commonwealth in numbers, and from Colonies as far away as Fiji, whose Programme Head visited us in 1951. A recent innovation, to meet the particular needs of these guests, is a special guest course, which omits some subjects of mainly internal Corporation interest and gives in more detail exercises in actual production.

Essentially all these courses are a pooling of knowledge and approach. Nearly half the time is devoted to discussion and analysis. Almost everyone, except the complete novice, has some specialised experience which he can use to expand what a given lecturer has said. The lecturer himself, perhaps not one of the permanent instructors but a Head of Department, is interested in how his policy strikes students at the operational level. Altogether, the ideal is that each student should, by the end of a course, have picked up much that will increase his proficiency at whatever is his precise job. Further, and almost equally important, he should have a clearer picture of the work of other broadcasting officials and of how his own fits in with theirs, for a common end. The administrator can learn something of the tension of production, the producer something of the responsibilities of administration, whilst both can be reminded that the whole thing is a waste of time without the co-operation of the engineers. Indeed, senior engineers do now regularly attend the courses.

Exercises play an important part in the work. First of all, students must learn the properties of the gear without which everything is useless, and how to handle it. Then there are interview exercises, talks exercises, magazine exercises, exercises in the art of the commentary, and a major production, on a closed circuit, to end the six weeks' intensive work which has succeeded the more leisurely three months of pre-war days. Each course is planned as a logical progression, and, except in rare instances, there is proportionally little value in attending individual lectures alone. Indeed a rapport quickly develops among those belonging to any given course, which is broken by the attendance of outsiders. Professional discussion goes on in tea or coffee breaks, and a course will adopt a joint view on some particular aspect of broadcasting which can impress a Controller or Head of Department who comes to lecture. But although he

may learn something from coming, and the class as a whole learn from him the practical points he has to advance, something else has been done—they have seen him in the flesh, and know a man and not a signature. This in itself, and students' knowledge of each other personally, is a useful by-product of attending, when one remembers that the 16,000-odd employees of the BBC live in over 200 different centres—forty-five or so separate ones in London alone. Abstracted from their day-to-day work, specialists can see it in perspective.

The lectures themselves cover the Constitution of the Corporation—its relation with the listening public and other outside bodies—its organisation and conditions of service, and the policy and practical requirements for doing the job effectively. Without it, many officers in the domestic services could remain quite ignorant of the work of the External or Television Services, and vice versa.

Apart from the General Courses, there are specialised ones, arranged to meet the requirements of individual departments—what may be called tactical training as

opposed to the long-term strategy of General Courses. These may last for a week or a fortnight or a couple of months, as the job in hand requires and as, which is an all-important factor in training, people can be spared to attend. A catalogue would merely show that, as a servicing department, Staff Training is called on by many sides of an organisation which includes on its staff more than 100 different trades or professions, from wardrobe-mistresses to industrial psychologists. Perhaps some of the most stimulating weeks are those devoted to conferences of Features producers, usually discussing a particular theme—the use of music in productions, or the treatment of scientific subjects. Producers compare their own methods, listen to and analyse the best comparable productions by other broadcasting organisations, hear distinguished visiting authorities and learn of new technical developments which may assist their work.

Similarly, various specialised courses for overseas producers re-stress the problems of overseas transmission. Recordings made in different parts of the world are played back to them, to illustrate, for instance, the



(BBC Photo)

GENERAL COURSE IN BROADCASTING FOR VISITORS FROM OVERSEAS, 6TH APRIL-8TH MAY, 1959

Left to right: Dr G. Padel, Deputy Director, Swiss Shortwave Service; Rex Haworth, BBC Instructor, Studio Technique; Ya'Acov Hazma, Deputy Director of Arabic Broadcasts, Kol Israel; E. B. Fadaka, Planning Assistant, Western Region, Nigerian Broadcasting Corporation; A. Blatter, Talks Department, Radio Basle, Swiss Broadcasting Corporation; Kyaw Nyein, Burmese Programme Officer, Burma Broadcasting Service; Khin Maung, News Reader, Burma Broadcasting Service; D. Wilkinson, Studio Manager, BBC External Services Programme Operations. Seated at Panel: Miss C. Croal, Programme Officer, Government Information Services, British Guiana; Mohamed Zain, Malay Programme Assistant, Radio Singapore.



(BRC Photo)

SPECIAL OVERSEAS COURSE, 4TH MARCH-10TH MAY, 1957

Rehearsing a feature programme exercise are (left to right): Miss Drosoulla Demetriades (Cyprus); Chang Han Piao (Hong Kong); Richard Sempa (Uganda); John Cordeaux (BBC Overseas Instructor, now seconded to the Sarawak Broadcasting Service as Head of Programmes); Hussein Safi (Aden) and Henry Coker (Sierra Leone).

dangers of trying to play music behind speech on a short-wave transmission to the tropics. This is also valuable for announcers, but only a small part of the extremely exacting range of knowledge which, with high basic qualities of intelligence and intelligibility, are needed to interpret the news and programmes to the listener with friendly authority. The recruitment and basic training of announcers is another important side of Staff Training.

There are regular courses for administrators. This is apart from such occasional ventures as refresher courses for senior staff. All large organisations today are closely concerned with the problems of scientific administration and personnel management. Much can be gained from departmental meetings, or from the courses which are arranged by outside bodies, attended by representatives of different industrial or national concerns and specialising in administrative theory and practice.

But an organisation as large and diverse as the BBC also finds the courses for its own administrators a valuable method of ventilating common problems and explaining new developments. Here, again, the physical circumstance of meeting, for a week's formal and informal

association, people who otherwise are voices on a telephone or initials on a memorandum, has a very real value. There are also courses for foremen and supervisors, dealing with personnel management, Union relations, and so on.

There are courses for sub-editors and week-ends for writers. But a particular urgency at the moment is that of aiding in the development of Colonial broadcasting systems. Quite apart, therefore, from the guests from overseas who attend the special courses, as part of the reciprocal services which are so happy a feature of international broadcasting, other courses are arranged for men and women from the Colonies. They have very exceptional requirements, are dealing with audiences whose 'listening situation' is quite different from a European one, and often are operating with gear and in conditions necessarily less advanced than ours. They have, however, enormous enthusiasm, often marked potentiality for the medium, and are cheerful guests. Their training, formally and by attachment, is an increasing requirement.

Domestically, the greatest urgency is, of course, in training writers, producers, designers, and engineers for

television. Some aspects of this have always formed part of the General Course. But for long after the war, the tempo of actual television production left no time or opportunity for formal training. Now, however, that phase is over. It is true that there is still an enormous amount to be learnt; an enormous field for experiment; an avid welcome for the new and personal contribution. Yet enough basic principles and practices have emerged for them to be passed on, as the fund of common knowledge to date, to the fledgling official in the television medium. He has to learn about the use of sound and the use of vision, and to keep their importance in the right proportion. He also has to grasp the fact that the situation in television, as in sound broadcasting, is altogether different from any of the other forms with which they can easily be confused. The production has still to be reduced to the proportions of a room in a home, not expanded to the audience in a theatre.

The television man, too, as the one in sound broadcasting, must know the responsibilities of the organisation to which he belongs, and the restraints—in his case even more strict—under which it operates. He must know copyright and contract arrangements, the value of audience research, or that good interviewing is an art and not a happy accident. But, above all, he must learn the technical possibilities and impossibilities: the problems of lighting, make-up, camera work, design, and so on in the most exacting of media.

No one, even with experience in sound broadcasting, the theatre, or films, can do this from listening to a few lectures and going a few times into the television studios. But much can be done by a basic course, and four of these are held a year, each lasting seven weeks. Those who are urgently to become practitioners then have further training, by attachment under supervision, lasting another five months or so. The courses are attended by new producers or engineers, staff from sound broadcasting who are being trained for television work (notably in the Regions) and promising specialist recruits, who may either join the Corporation permanently, or may become useful contributors when their training period is over. There are similar courses for Production Assistants, Television Production Secretaries, and Television Make-up Assistants.

As well as this, there are courses to introduce potential writers or other contributors to television services, and courses for education officers or others who wish to know how the new form of broadcasting may be adapted to help their work in the way in which they are accustomed

from sound. For both media have to meet the Corporation's general requirement to inform, educate and entertain. Writers want to know what to write and how much (not unnaturally) they will be paid if their work is acceptable. We are glad to tell them how to set about the job and what, with due regard for the overall responsibilities of broadcasting, the Corporation can afford on behalf of its viewers. Television training is still only in the early stages but it is rapidly expanding. Here, too, we welcome guests from countries which are just starting television. They often have much to contribute, as well as to take away with them.

Staff Training means much more than all this. There is, for instance, a secretarial training school which teaches young girls with the appropriate qualifications not only how to be good secretaries, but how to be good BBC secretaries: to know where to lay their hands on the right information, and—it is the essence of a self-respecting staff—what it is all about. We also train in languages, or other subjects likely to help their work and themselves, young people whose duty as messengers or junior secretaries might otherwise seem to lead to a dead end. There is initiation on original entry, and the relation of Regional staff to the work of the Corporation as a whole.

Well over a thousand members of staff and guests attended various courses of one sort or another in 1959.

There are, moreover, various training reserves, which select and train promising people for posts (to be obtained in competition) which are likely to fall vacant. The General Reserve, the Television Reserve, the Secretarial Reserve, the Announcers' Reserve—all these mean the detailed and personal training of the people who may be concerned with next year's programmes. There are also administrative trainees and others. Broadcasting is an industry: not a pull-in for ambitious amateurs. Broadcasting is also creative interpretation—giving the best at all levels, to all levels of the public. It has the world to draw upon, and alert listeners and viewers. It cannot do its task without a mastery of the processes and purposes of the media of sound and television broadcasting. And that needs training.

Every instructor is also, in degree, a practitioner—and not just an academic teacher. For the programme (it must be the essence of all instruction, to everyone concerned) is what it is all about. Competence without purpose offers no satisfaction to the staff who exercise it. It would mean, also, precious little benefit to the listener or viewer. To provide both is the exciting aim of any training in broadcasting.

TELEVISION IN INDIA

by *Shri J. C. MATHUR, I.C.S.,*
Director-General, All India Radio

Inauguration

1. All India Radio's experimental television service was inaugurated in New Delhi on the 15th September, 1959. India thus joined the small community of Asian nations with a television service of their own. In the words of the President of India, Dr. Rajendra Prasad, who inaugurated the service, "a significant stage in the progress of broadcasting and telecommunication in India" was reached. Experimental though it is, it is a climax to the all-round and continuous development that has taken place in Indian broadcasting.

Early Planning

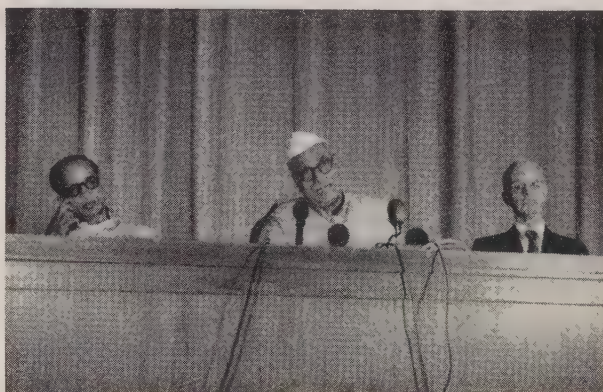
2. This project was planned for the first time in 1956 when at the Unesco General Conference held in New Delhi a proposal was accepted for the grant of a subsidy to AIR for the establishment of a pilot television unit. This grant of \$ 25,000 has enabled AIR to obtain a number of television sets and to finance the project. Meanwhile, AIR bought from Messrs. Philips (India) Ltd. a 500-watt transmitter with accessories, two television cameras and 30 television receivers which Messrs. Philips (India) Ltd. had brought out for a demonstration stall at the 1955 Industrial Exhibition.

This equipment has been substantially supplemented by means of two cameras, a telecine unit and a microwave link that the United States Government have been good enough to lend to AIR for a period of two years. Two engineers and one programme officer of All India Radio have been to the United States on a travel grant for training in television techniques. Earlier, another programme officer of AIR had been to the BBC for a training course in television under the Imperial Relations Trust Bursary. Thus, behind this modest experiment is the ready assistance and willing co-operation received from various sources, which AIR gratefully acknowledges.

Community Viewing

3. The experimental television service, which is in the nature of a pilot project, is being operated from Delhi for viewers within a range of about 12 miles from the Akashvani Bhavan in New Delhi. Its extension to any other part of the country is not contemplated just at present. The plans for the development of broadcasting, however, envisage a regular television service at Bombay.

The existing experimental service is designed for community viewing, the primary object being adult education. AIR has installed 20 television sets at selected community centres in and around Delhi (7 in rural and 13 in urban areas), which are organised by the State Governments or institutions connected with adult education and social welfare work. The average viewing audience is estimated at 150-200 persons per centre. The number of sets is expected to be increased to about 60 very shortly. At each of the centres where a television set has been installed, a tele-club has been formed, this



The President of India, Dr Rajendra Prasad, inaugurating the Television Service at a function held in New Delhi on 15th September 1959.

being a well-tryed and effective method of organised community viewing. After seeing every programme, the members of the tele-club have an informal discussion among themselves on the subject matter of the programme. The conclusions arrived at and the suggestions made at these discussions are communicated by the secretary of the tele-club to the Television Unit for implementation when planning subsequent programmes. In this way, a link is being established between the tele-clubs and AIR, which is essential for studying the impact of television or the rural-cum-urban local population for which the existing experimental service caters.

Educational Programmes

4. The experimental service at present consists of two programmes a week on Tuesdays and Fridays for a

duration of one hour (7 p.m. to 8 p.m.) each day. The programmes are mainly informative and educational in character, as they are intended for community viewing by a cross-section of the urban and rural population at the various centres in the city area and suburban villages where the television sets have been installed. Items of special interest to children and some entertainment items are, however, also telecast regularly. The types of items included in the programmes are illustrated talks, interviews, dialogues, discussions, documentary films, plays, skits, puppet shows, dance recitals (solo and in groups), dance-drama, ballet and light and classical music—vocal and instrumental—by soloists and ensembles.

Arrangements are in hand to start an educational television programme for the schools in Delhi by shifting one of the two programmes each week to day-time and devoting it entirely to schools. Only a few schools are at present equipped with television sets. Before a sizable number of schools acquire sets of their own, parties of students from different schools will be collected at the nearest centre in the city, where a set has been installed, for viewing the programme by turn during the period set apart for it. The details of this scheme are being worked out in consultation with the educational authorities of Delhi State.

Staff

5. The operation of the experimental service is the responsibility of the Television Unit of the Research Department of All India Radio. The research engineer, who is the head of the Research Department, is in overall charge of the technical side of the service and is assisted by a technical staff consisting of 9 engineers and 6 mechanics.

Programme planning and production is under the control of the deputy chief producer (Drama) attached to the headquarters of All India Radio, who is assisted by two producers, two programme organisers, two announcers, one make-up expert, one scenic designer and a number of artists for miscellaneous programme duties.

The administrative side of the Experimental Television Unit is looked after by the assistant station director (Television) who functions under the administrative control of the research engineer and is assisted in his administrative and organisational work by a tele-club supervisor, one transmission and one studio executive

and some clerical staff. The total strength of the operational and administrative staff at present is 42.

Aims of the Experimental Service

6. With its limited scope and specific objectives, the experimental television service at Delhi does not constitute a regular television service but is only a project undertaken for experimentation, training and evaluation. The experimentation is in two directions, viz., putting out programmes primarily of educational and cultural value for the urban and rural population as also for schools of the Delhi area and carrying out technical investigations on propagation, transmitter and studio techniques.

7. The planning and presentation of programmes during the experimental phase would provide the occasion for the training of both programme and technical personnel of AIR so that they may learn to handle the new medium and understand its technique. All the engineers and programme personnel engaged in this project are Indians and belong to All India Radio. Some of them have had opportunities to observe television production techniques in the United Kingdom and the United States.

The Basis for a Future Regular Service

8. A sociological study of the impact of television as a medium of mass communication upon selected urban communities is to be undertaken shortly. Funds for this purpose have been allocated by Unesco. This evaluation is expected to be of use not only to India but also to other Asian countries in the planning of television as a medium of community education in the future.

9. The experimental television project at present consists only of limited technical equipment—four cameras, a 500-watt transmitter, a telecine unit and a microwave link. The programmes are transmitted on channel 4-B and I, 62-25 Mc/s (video) and 67-75 Mc/s (sound) and conform to the 625 lines 25 frame 50 fields CCIR standard. It is only after a sufficiently long period of experimentation that the system to be adopted for the regular television services in the country will be selected.

Even though the experimental television service is a modest experiment, it is an exciting adventure and points to the future of a powerful medium being harnessed to an educational and cultural purpose.

CULTURAL AND EDUCATIONAL TELEVISION PROGRAMMES OF NIPPON HOSO KYOKAI

by TADASHI YOSHIDA

Chief of Programme Management Section, International Broadcasting Dept., NHK

It is hardly necessary to mention here that the producers of television programmes in Japan believe it their duty to produce and broadcast programmes which will help the viewer to adjust himself properly and happily to the complex social structure of the present time and to continue his growth as man.

In dealing with educational and cultural television broadcasts which are not limited to any particular place or time, a thorough understanding of what the viewer is interested in, what kind of knowledge he seeks to obtain and what he especially wishes to enjoy is necessary. It is also incumbent upon the producer to try to present the programmes as satisfactorily as possible. It has therefore become an important function of television to bring some unknown or rare world before the viewer in such a manner as to be educational and, at the same time, entertaining.

Several television programmes on which I shall report hereafter were produced specially by NHK according to the ideals mentioned above.

I. Special Cultural Programmes

Observations of the Annular Eclipse of the Sun — a ternary remote pick-up broadcast on April 19, 1958.

This programme created a sensation in Japan since it was presented as the first attempt to telecast on-the-spot observation of the annular eclipse of the sun. Our television staff in charge of this project spent a whole month in preparations, setting up a total of nine television cameras at three selected points in the country—two in Tokyo and one in Kagoshima, Kyushu, the southernmost island. The historical observations of the eclipse of the sun were relayed from the said three points simultaneously and synthetically for fifty minutes starting at 10 minutes after the noon of April 19th.

Although Japan at the time was actually outside the regular zone, the eclipse of the sun and natural changes accompanying it were caught minute by minute by the cameras which had carefully been set up for the purpose.

The sight of the eclipsed sun presented for the first time on television screens made great impressions on the minds of our viewers, who must surely entertain high hopes now for the future of television as the eye of the scientific world.

Scientific Observations of the Sea Bed — a special programme relayed from the sea off Hatsushima Island near Atami in Shizuoka Prefecture from 13.00 to 14.00 on June 8, 1958.

Scientific observations of the sea have been much talked about in recent years, and this programme parti-



General View of the Kegon Falls.

cularly drew the attention of our viewers since it introduced to them the mystery of the sea by the use of an aquatic television camera sunk, for the first time, to the bottom of the sea.

A deep-sea submarine, the Tokai-go, was provided with remote pick-up equipment, and a diver cameraman

freely moved his aquatic camera to reveal the mystery of the sea bottom.

The programme contained a colourful depiction of women divers, the aqua-lung, remarkable improvements made in diving methods, and various topics of the science of the sea.

The success of this programme proved that the television broadcast could play an important part in the future in the exploitation of marine resources, as well as in life-saving activities at sea.

From the Basin of the Kagon Falls — a special remote pick-up programme featuring the Kagon Falls at Nikko in Tochigi Prefecture presented from 12.15 to 13.00 on August 10, 1958.

The Kagon Falls, famous in the nation's history and legends, is one of the three largest waterfalls in Japan. This very interesting programme was the fruit of the efforts made by the staff of NHK-TV, setting up cameras around the area to catch the stereographic image of the Falls, and using an aquatic camera to seek the mystery of the basin of the Falls.

The project encountered enormous geographical difficulties, but they were technically overcome by the efficient transfer of all necessary installations to the vicinity of the Falls.

The magnificent view of the Falls was caught stereo-

graphically by the eyes of the television cameras. The programme included scientific explanations about the origin of the Falls, as well as the artificial control of the waters by a dam. It was precisely the type of programme to be telecast on a hot summer afternoon.

II. Educational Television Programmes

The NHK Educational Television Service started presenting its programmes on January 10, 1958, using a new channel. It was the first methodical and systematic telecasting dedicated solely to the school and social education of the people of this country.

Plans to broadcast educational television programmes had long been discussed by NHK and those concerned. The true purpose of this service is to utilise fully the excellent cultural and educational facilities of television broadcasts, especially in the field of school and social education.

Television networks in Japan include those of NHK and 39 commercial stations, and the number of registered viewing households in October, 1959, exceeded 3 million.

With the rapid development of television services, the number of sensational entertainment programmes has remarkably increased. In view of such a tendency appearing in television, the establishment of NHK's Educational Television Service was expedited to meet the



"Science of the Sea Bed" — preparing for diving with television cameras.

needs of the viewers to protect their young people from undesirable effects by broadcasting educational and cultural programmes which will help a more sane development of their emotions.

Since radio waves can simultaneously cover vast areas reaching even the remotest corners of the country, the NHK Educational Television Service is broadcasting programmes of high educational content and cultural value to offer its viewers equal educational opportunities, and to improve the cultural level and promote the social welfare of the people.

Prior to the inaugural broadcasting of educational television programmes, careful preparations were made for a period of more than one year. A large group of experts in various fields were entrusted by NHK to organise a preparatory programme planning committee, which drafted the basic principles for the compilation of programmes, for the study of specific programmes, and for the actual production of such programmes. It was decided that programmes should be compiled as follows:

1. educational programmes for schools and individual homes for the purpose of supplementing the basic national education;
2. educational programmes for young people for the purpose of promoting their knowledge, ability and sentiment;
3. social education programmes of all kinds for the purpose of promoting the viewers' common sense as the members of their respective communities, cultivating their intelligence, and improving their vocational skill;
4. all types of educational and cultural programmes to help develop science, art and the people's art of living;
5. news and commentary programmes to improve the people's grasp of current topics and international developments.

The NHK Educational Television Service bases its educational and cultural programmes on the above fundamental principles. The following is a list of hours during which these programmes are now being telecast.

(a) *From Monday to Friday*

- | | |
|-------------|---|
| 1000 - 1320 | School programmes for kindergarten, primary and junior high school pupils |
| 1900 - 1930 | Programmes for juveniles |
| 1930 - 2000 | Language study programmes (English conversation) |
| 2000 - 2030 | Natural science programmes (for young people and adults) |
| 2030 - 2100 | Social science programmes (for young people and adults) |
| 2100 - 2130 | Industrial and professional programmes (for those engaged in agricultural, business and industrial professions) |

- | | |
|-------------|---|
| 2130 - 2200 | Lecture programmes on mathematics for senior high school students (for lower graders) |
| 2200 - 2230 | Lecture programmes on science, mathematics and English for senior high school students (for higher graders) |
| 2230 - 2300 | Language study programmes (German, French and Japanese) |

(b) *Saturday and Sunday* (1200-1300, 1900-2300)

High-level cultural programmes telecast during these hours are meant not for any particular group or groups of viewers but to help raise the cultural level of the general public.

Thirty minutes is the minimum broadcasting time allocated for the broadcast of each instalment of these educational and cultural programmes, most of which are serial programmes broadcast for a period of three to twelve months. The planning and formation of these programmes are carried out by a committee of several special scholars and experts who arrange the contents methodically and systematically.

Two years have already elapsed since the inauguration of this new Television Service, which has so far built up quite a favourable reputation; it certainly added a new page to the broadcasting history of this country. We are now confident that it will be instrumental in promoting social and adult education in Japan. It has a very bright future before it.

III. Other Social and Educational Television Programmes

Thirteen initial instalments of *Developing Rural Communities*, which is an experimental Unesco television programme broadcast between January and April, 1957, to study the effect of television programmes meant for the education of adult farmers, have been completed, and the second series is now being presented to contribute further to adult education in farming villages.

We have also decided to participate in one of Unesco's projects for its members, "The Estimation of the Educational Value of TV Programmes for Working Youths", the funds for which are to be provided by the Unesco Headquarters.

We are broadcasting, therefore, a 30-minute serial programme consisting of 13 instalments between January and March, 1960. This programme is to be broadcast for the working youths of our country to strengthen their recognition of human rights, and to impress upon them the need for mutual understanding between nations.

I have here reported briefly on NHK's special TV programmes which are being broadcast for the education of adults, as well as for school and social education. These programmes have been broadcast since April, 1958, and some of them are still on our programme schedule.

THE ROLE OF BROADCASTING IN THE LIFE OF THE PEOPLES OF THE PACIFIC

by M. ESPINASSE

Director of Radio-Papeete

There are many factors common to the island territories of the Pacific—such as dispersion, isolation, and the various advantages of oral contact—that justify the efforts made by the different territories to promote broadcasting.

Radio-Papeete with its 4-kW transmitter making it the most powerful station in the area broadcasts for 38 hours a week—12 in Tahitian and 26 in French.

Its purpose is to disseminate local and international news, contribute to the work of popular education, and provide wholesome and enjoyable entertainment.

One has only to pass through the centres of population when programmes are on the air, or along the main Tahiti road with its houses on either side, to realise how successful broadcasting is in French Polynesia where almost 15,000 sets are tuned in daily and programmes reach practically the whole of the population.

The attraction of radio sets for the masses in Polynesia and the increase in their number make broadcasting a privileged instrument of communication, provided of course that it respects the main features of its audience's psychological make-up.

Advantages of the Spoken Word

Widely dispersed within one single territory throughout a scattering of islands, the peoples of the Pacific are shut in on themselves by virtue of their insularity and split up into compartments because of the volcanic nature of the terrain of these islands. In these circumstances, radio provides the only means of reaching them quickly and easily.

In addition to the geographical factors which are unfavourable to the dissemination of the printed word, there are other human factors which hinder the spread of ideas in print: partial illiteracy and perhaps more than anything else the unattractiveness of the written word to peoples who have never used writing. Add to all this the difficulty of putting into written form vernaculars which are exclusively spoken languages, to say nothing of the complexity of the written language (at least as far as French is concerned), always more polished than the spoken language and bound to observe more strictly the rules of syntax that even the educated native fails to understand.

The spoken language on the other hand offers obvious advantages compared to the drawbacks of the written language. Its use makes it easy to express what is meant in the vernacular, and Western languages seem more accessible to native populations in their oral form which is less academic than the written language.

It is not surprising therefore that the various powers exercising protectorates in the South Pacific should have devoted to broadcasting what may seem a considerable amount of attention in view of the population figures involved.

Of the main stations in service in the South Pacific, Radio-Papeete is well up on the list as regards power and comes after Nouméa and Biak. As to duration of the broadcasts, with the exception of the programme of the Australian Broadcasting Commission relayed by Papua and Guam, whose private station gives much of its time to advertising, Radio-Papeete with 38/39 hours of broadcasting per week is again well placed in the list, coming after Fiji (87 hours) and Nouméa (47 hours), and almost equal with the Samoa Islands and Dutch New Guinea. With 12 hours of broadcasting in Tahitian it shares first place with Fiji in the list of vernacular broadcasts.

The Programmes

Radio-Papeete broadcasts in Tahitian from 11.45 to 12.00 hours and from 17.30 to 19.00 hours on weekdays. On Fridays there is a broadcast from 21.30 to 21.45 hours to Nouméa and on Sundays a bilingual programme from 10.00 to 13.00 h. and again from 17.30 to 19.00 h. Programmes in French are broadcast on weekdays from 12.00 to 13.00 h. and from 19.00 to 21.30 h. On Sundays there is a bilingual programme from 10.00 to 13.00 h. and again from 19.00 to 21.30 h. A special programme for schools is broadcast on Tuesdays from 17.00 to 17.30 h.

The threefold aim of Radio-Papeete is to inform, to instruct and to entertain. It broadcasts local and international news in Tahitian and French and collaborates with the PTT in sending out personal messages to listeners in the 150-odd islands whose size does not justify a radio installation. Every night at 20.00 h. international news is relayed direct from Paris and listeners can even

synchronise their watches by the Observatory talking clock.

Programmes whose purpose is to educate are concerned with culture, music, agriculture, popular astronomy, accident prevention, the preservation of the Tahitian language in its original purity, and the learning of French. Experimental broadcasts to schools were transmitted in November 1957 for three half-hour periods a week from 08.00 to 08.30 h. but nothing further has been done in view of the impossibility of providing enough schools with receiving sets. One half-hour programme has survived however and is given on Tuesdays from 17.00 to 17.30 h. The Catholic, Protestant and Adventist Churches each broadcast a weekly sermon in the two languages.

In the field of entertainment, Radio-Papeete broadcasts recordings of Tahitian music which are very popular with listeners. The widespread distortion of folk music, which is no doubt a sound commercial proposition, is combatted in the interests of research and the successful promotion of authenticity, a field in which radio lends valuable support.

By way of balanced entertainment, French-language programmes offer the listener 5 hours of music a week (classical, operatic, light, public concert), 9 hours of variety including a daily half-hour radio magazine devoted to life in the Territory, 2 hours of drama, and 3 hours of miscellaneous programmes. These figures are proportional and are in no way hard and fast.

Here is a typical evening programme:

17 - 17.30 School broadcast in French
(Tuesdays)

17.30 - 19.00 *Tahitian programme*

15 minutes of personal messages directed to islands without a radio installation

10 minutes of international news

20 minutes of local news and official announcements

15 minutes concert

5 to 10 minutes weekly devoted to cultural talks, stories and music

15 minutes of miscellaneous items linking up with next programme

19.00 - 21.30 *French programme*

30 minutes of orchestral music, variety, or local programmes

30 minutes of radio magazine, local news, outside broadcasts, programmes on life in the Territory, and advertising

30 minutes of news relayed direct from Paris

1 hour of drama, culture, opera, religious broadcasting, and symphonic music.

Some of the broadcasts are prepared on the spot, such as local news, outside broadcasts, relays, radio services (i.e. programmes of an essentially social nature, health and hygiene, advice to farmers and fishermen, housewifery, school broadcasts, etc.). The rest are made up of programmes on European culture, produced mainly by the RTF and selected by the Société de Radiodiffusion de la France d'Outremer.

At present, Radio-Papeete is going ahead with its plans to step up local production. It is endeavouring with the facilities at its disposal to produce stimulating programmes adapted to its audiences, in the field of entertainment as well as information and education.

Collective Listening — A Social Occasion

A walk in the evening when programmes are on the air—through the villages of the archipelagoes, in Papeete, or along the highroad of Tahiti—is enough to make one realise how successful broadcasting is in French Polynesia.

The number of sets, estimated at more than 10,000 in 1956, was nearing 15,000 in 1959—a figure which is scarcely credible for a population of under 75,000 inhabitants. Enquiries show that there are often two sets per household. It is worth noting that, apart from Customs duty, there is no special fee to be paid for a receiving set.

Set density varies considerably, ranging from 25 to 30 for the 4,000 inhabitants of the Austral Islands (385 miles from Tahiti) and 50 to 60 for the same number of inhabitants in the Marquesas Islands (780 miles from Tahiti), to more than 12,000 sets among the 45/50,000 inhabitants of Tahiti and the Leeward Islands (120 miles from Tahiti).

Nevertheless, collective listening being one of the social characteristics of the less highly developed islands where the number of sets is smallest, it may be said that practically the whole population, from the babe in arms to the aged dyspeptic, comes into daily contact with radio.

It is a relatively easy matter to discover which broadcasts are most popular with listeners in the archipelagoes where sets are few in number, such as the Marquesas Islands or the Austral Islands, and Tuamotu to a lesser degree — islands where collective listening has become a social institution.

At 17.30 h. (18.00 h. in the case of the Marquesas situated further to the East), the 200-odd inhabitants of a large village (including infants) assemble after the evening meal, freshly washed and tidily dressed, and sit round the two or three battery sets. They listen carefully to the entire programme of Radio-Papeete in Tahitian: the shipping announcements indicating the approximate position of the schooner which takes away the copra and brings in the freight, the personal messages and the broadcasts in Tahitian. Later in the evening, the young

people like to listen to Radio-Cowboy—American stations broadcasting the cowboy songs that the Polynesian likes next best to his own music.

Radio's Place in Daily Life

However elementary and restricted the listening habits of this rural class may be, the part played by broadcasting in their lives is perhaps more important than in that of the more highly developed classes living nearer to the urban centre of Papeete. The rural communities have in fact no other means of hearing local news; the arrival of the schooner is the most significant economic event in their lives and it is therefore important for them to know in advance exactly when it is due. Then again, they have very little in the way of distraction, and radio provides them with a pleasant opportunity to meet and have a chat.

It is of course more difficult to know exactly what part radio plays in the lives of the populations where set density is approximately one per home and French is understood either perfectly or at least sufficiently well.

The following results were obtained from an investigation undertaken by the Education Service among 100 pupils taking a further education course in Papeete. (These were pupils from Papeete and the surrounding district from an educated background where there is generally a great deal of cross-breeding but economic and social conditions are often extremely modest.)

Out of 85 replies: 9 had no radio set but listened in at a neighbour's, and 34 invited neighbours to listen with them;

72 replies showed that the respondents listened to Radio-Tahiti at mid-day and in the evening, and 46 that they were in the habit of listening to foreign stations, Honolulu and Radio-Cowboy being most often mentioned for their musical programmes;

47 replies showed that the respondents listened carefully and 12 that they did not (in the case of the latter, these were as often as not Chinese of French nationality and the dressmakers' sewing machines were generally held responsible);

9 replies stated that the radio was turned off at the end of the programme in Tahitian (these were mostly pupils who were obviously least well educated).

In answer to the question: "If there were no radio, would your life be changed?"

11 did not know;

5 had not understood the question and answered: "I would go and listen to my neighbour's set";

39 thought their life would be changed, some because they would have to break a habit, others because they would miss the local news, and yet others because they had no alternative means of entertainment: "The house would be sad", "We'd be bored", "If there was no radio my life would be changed", "I've got used to listening in every morning and every evening, especially to music which I like so much." "If it wasn't there, I don't know what I'd do." "When there's no radio life is very sad for we like to listen to music and the news";

28 thought there would be no change in their lives; they would play their pick-up or the guitar to amuse themselves: "Not at all. If we had no radio our lives would not be changed because our neighbour would turn up the volume of his set or we'd play the gramophone, or else my brother Ernest would play his guitar."

The Modern Means of Entertainment

As an instrument of prestige and a flattering outward sign of wealth, radio sets are very popular in Polynesia. Approximately 12,000 to 14,000 of them are distributed in homes in decreasing frequency as one moves away from Papeete towards the outlying districts and islands. Apart from the information given about the movements of ships and the transmissions of personal messages, radio is generally regarded by its listeners as a means of entertainment which has more or less completely taken the place of the traditional forms of amusement. The news broadcast in Tahitian and the radio magazine in French (as well as the transmission of messages to a certain extent) are considered rather as a means of satisfying curiosity than a source of information or knowledge.

In conclusion, it may be said that broadcasting in Polynesia, perhaps more than anywhere else when one thinks of that scattering of islands in the midst of the Pacific, is a privileged instrument of communication and education, provided of course—and this is worth repeating—that it recognises and respects the special characteristics of the Polynesian's psychology, for he can offer a most successful show of passive resistance to anything or anybody that tries to take him by storm or demands an intellectual effort of which he is incapable.

NEWS AND INFORMATION

THE BRITISH COMMONWEALTH BROADCASTING CONFERENCE

The Fourth Commonwealth Broadcasting Conference comprising delegates from the national broadcasting organisations of Australia, Canada, Ceylon, Ghana, India, Malaya, New Zealand, Pakistan, South Africa and the United Kingdom closed in New Delhi on 11th February 1960, Ghana and Malaya being represented for the first time. Apart from exchanges of information on professional subjects, the Conference reached decisions on several matters affecting the development of broadcasting in the Commonwealth.

A special sub-committee was set up to discuss the provision of programmes for rural communities and the participants agreed to add to the normal farm broadcast activities the compilation, editing, and broadcasting of folklore, folk songs and other forms of folk culture. The Conference agreed to continue a quarterly journal on rural broadcasts published hitherto by the Australian Broadcasting Commission. For the present All India Radio will undertake the editorial responsibility.

Discussing exchanges of programmes the Conference formulated a scheme for the joint production of radio features. The Canadian Broadcasting Corporation will be responsible for the first of these.

The need for close collaboration between broadcasting and educational authorities in order to achieve a fuller utilisation of school broadcasts at the listening end was stressed.

The Conference emphasised that, in countries where universities are not fully developed, broadcasting has an important role to play. The starting of listening and discussion clubs and special university courses was also discussed.

Recent television developments in the U.K., Canada and Australia were noted. In view of the fact that All India Radio had already started a limited educational service and New Zealand, Malaya, Ghana and Pakistan had plans to start their own television services, the Conference discussed in some detail the associated problems and the help which those with established television services can render to those about to start.

The Conference re-affirmed the right of television news organisations and agencies to obtain and present film coverage of sporting and other public events in television news bulletins without payment to promoters. A code of practice on freedom of access for news, laying down reasonable limits and safeguards for promoters and holders of exclusive rights was adopted in principle.

The Conference agreed that direct broadcasting of Parliamentary proceedings (a long standing practice in

Australia and New Zealand) by organisations which have only a single programme channel is impracticable and that, even where two channels are available, there are serious problems in providing an adequate service to listeners.

The impact of commercial broadcasting was duly considered in detail with particular reference to the duty of national broadcasting organisations to provide information and education as well as entertainment. It was pointed out that in Asia and parts of Africa the effect of commercial programmes on the semi-literate and unsophisticated as well as young listeners could be undesirable. The Conference was of the opinion that if, for any reason, commercial broadcasting was introduced in any country it should be controlled by the national broadcasting organisation. It also considered that to meet the financial difficulties of certain member organisations it would be better to provide low-cost receivers with a view to increasing the number of licence holders rather than resort to advertising.

The engineering committee was concerned with the study of existing techniques and of new developments in broadcasting. It discussed the freer interchange of information on engineering problems and on improved operation and maintenance procedures in sound and television. It recognised in particular that uniform methods and standards were essential for the interchange of recorded programmes in sound and television throughout the Commonwealth. The methods used in the training of engineering staff were discussed, particularly having in mind the worldwide shortage in this field. Those member organisations already operating television services will extend training facilities to others. The design of new equipment for television, the interchange of reception reports on shortwave services and the desire to achieve common specifications to ensure the supply of equipment at low cost were all discussed. The committee also explored the likely scope of new developments not yet in service, notably colour television and stereophony.

A sub-committee studied problems of copyright affecting broadcasting and the plans for new legislation in various countries.

The Conference noted that most programme journals were run at a loss but considered that such costs were a legitimate charge on publicity funds.

The Conference agreed on ways and means of implementing the various decisions taken and strengthening the links between member organisations.

The next Conference will be held in Canada in May-June 1963.

DENMARK

Broadcasting Act, 1959. — Under the terms of this Act the Minister of Education is empowered to set up a Radio Council which is responsible to him for the management of Danmarks Radio, an independent public institution with the monopoly of sound and television broadcasting in the country. The Council lays down the general principles for the activities of the broadcasting organisation, and ensures that the programmes are versatile, cultural and educational.

Members of the Council are appointed as follows:

- (a) two by the Minister of Education,
- (b) one by the Minister of Public Works,
- (c) ten by Parliament to represent the listeners and viewers,
- (d) one by each party represented on the Parliamentary Finance Committee.

The ten members referred to under (c) above are appointed by listeners' and viewers' organisations recognised by the Minister of Education and representing not less than five thousand members paying subscription and licence fees, which have been in existence for a year or more. Recognised listeners' and viewers' organisations representing religious and national minorities may make nominations under this provision irrespective of their membership figure.

The Radio Council administers the Broadcasting Fund, into which is paid the income from licence fees, to be used solely for broadcasting. The amount of the licence fee is fixed by the Minister of Education on the recommendation of the Council with the approval of the parliamentary Finance Committee, and is sufficient to cover all the expenses of Danmarks Radio and the interest and repayment of the Treasury's advances. These advances are made under Section 2 empowering the Minister of Public Works, after consultation with the Minister of Education, to establish and operate the radio and television stations necessary for Danmarks Radio and to advance the required amounts, which are voted in the annual Finance Act.

On the recommendation of the Radio Council, the Minister of Education lays down provisions for the financial administration of Danmarks Radio and for the collection of licence fees. The Council submits an annual budget to the Minister of Education.

The day-to-day management of Danmarks Radio, apart from the technical service, is conducted by a director-general appointed by the Minister of Education on the recommendation of the Radio Council.

The stations used by Danmarks Radio are constructed and operated by the General Directorate for Posts and Telegraphs, and the resultant expenses are defrayed by the Broadcasting Fund according to rules fixed after negotiation between the Radio Council and the above-mentioned Directorate, and sanctioned by the Ministers of Education and Public Works.

The broadcasts of Danmarks Radio may not be commercially exploited without the organisation's permission. Concerns selling or letting radio or television sets to consumers must communicate to Danmarks Radio the name, position and address of any purchaser or hirer.

The provisions of the Act do not apply to the Faroes or to Greenland. The Danish State has the monopoly of broadcasting in Greenland.

IRELAND

Temporary Director of Broadcasting. — Mr. Matthew Doherty has been appointed temporary Director of Broadcasting as from 25th February 1960, on the resignation of Mr. Maurice Gorham. Mr. Doherty has been Administration Officer in Radio Eireann since the service was reorganised in 1953.

The Broadcasting Authority Bill, 1959. — This Bill, circulated early in 1960, provides for the establishment of an Authority with corporate status to be known as "Radio Eireann" consisting of nine members appointed by the government to undertake responsibility for the existing sound broadcasting service and for the establishment and operation of the proposed television service ⁽¹⁾.

Provision is made for non-repayable grants not exceeding £500,000 during the first five years to supplement income from licence fees and advertisements. Repayable advances for capital purposes not exceeding £2 million may be made.

Ministerial approval will be required for the amount and distribution of time allotted for advertising and certain kinds of advertisements may not be accepted. Irish advertisers and advertisements in the Irish language will be granted preferential rates.

JAPAN

Colour Television Programmes. — March, 1952, marked the first public demonstration of colour television reception by NHK, the Japan Broadcasting Corporation. It was held for the purpose of demonstrating the results of research work at the NHK Technical Research Laboratories located in the western sector of Tokyo.

In February of the following year a regular black-and-white television service was inaugurated at the NHK Tokyo television station.

Research work on black-and-white television was first undertaken in 1940, immediately upon establishment of the NHK Technical Laboratories in May of that year. The development of television, from the experimental through the testing stages to the regular service, was accelerated greatly after 1948.

Research work on colour television was conducted in parallel with the black-and-white system, but in this

⁽¹⁾ See *EBU Review*, No. 57 B, page 19.

field a large number of difficulties had to be overcome one by one. In the early stage of research, the work proceeded cautiously, while seeking colour tone stability through repeated experiments involving radio engineering.

A year after the black-and-white service was established in Tokyo, similar services were set up in Nagoya and Osaka. These were succeeded by services in Fukuoka and Sapporo, thus gradually expanding the television network. Meanwhile, an experimental colour television station was established in December 1957 in Tokyo. The experimental service began beaming compatible colour programmes under the NTSC system over channel 6. The standards adopted were 525 lines, 60 fields, 30 pictures per second.

At about the same time two commercial broadcasting companies also started experimental colour television. One was NTV (Nippon Television Network Co., Ltd.), the other was KRT (Radio Tokyo Television, a limited company). Of the two, the former is the more active. For example, the colour service of NTV presents the golden-hour monochrome programmes simultaneously as experimental colour programmes. It also presents regular quiz shows and dramas, as well as remote pickup sports programmes such as baseball and boxing matches. KRT, on the other hand, presents filmed programmes as its experimental service.

The experimental colour television service of NHK compiles its programmes separately from the regular black-and-white service. Its programme hours are also established separately from the regular service. For this reason, it may be considered more purely experimental compared with the commercial experimental services.

With the establishment in January, 1959, of the Educational Television Service operating on a different channel from that of the general service television, opportunities of compiling colour programmes of greater variety have increased.

From the standpoint of programme organisers, the first step in the study of colour programme production began in an endeavour to discover the differences between black-and-white and colour techniques. At the same time, the set designers and graphic designers made it their main objective to find the differences in the form and composition of the shows and dramas in the limited sphere of colour composition suited to the various conditions involved in radio engineering.

With respect to the effect of broadcasting, efforts to discover the point of issue relative to the most effective utilisation of the advantages of the compatible system are required of those in charge of costume and make-up. Hence, the need for close cooperation between these people and the engineers, and also between the black-and-white monitors and colour monitors who study the live programmes from the studio.

The colour television standards had not been adopted in Japan as of November 25, 1959. Consequently, the experimental services now in operation are destined to remain as such. Producers of colour programmes,

however, have made considerable progress in their work; for example, topics involving certain types of bacteria have already been dealt with by the use of microscopes. They have also been successful in their trials, similar to the NBC chroma key system, in musical shows.

Such being the situation, colour television in Japan, together with the colour receiver makers, is expected to take a broad stride forward, when the standard system is determined.

TADASHI YOSHIDA

NEW ZEALAND

Government Decision on Television. — New Zealand has progressed a step further towards its own television service ⁽¹⁾, after the decision of the government that television is to be introduced into the country. The new service will be operated in association with the New Zealand Broadcasting Service, and at a later stage provision will be made to include advertising in the programmes.

NORWAY

Norsk Riksrkringkasting Annual Report 1958-59. — During the year ended 30.6.59, developments in the field of television proceeded under the plan providing for daily transmissions from 1st July 1960. Studio broadcasts were transmitted on two evenings a week in addition to some outside broadcasts. Operational expenses for television amounted to Kr. 1,096,614, while income from TV licence fees (24,427) and the purchase tax on sets (534,611) totalled Kr. 559,039. The television staff numbered 36 and the licence holders 1773. The licence fee is Kr. 45 per annum, payable in addition to the radio licence fee.

In sound broadcasting, an average of 12 1/2 hours per day was transmitted. Programme expenses amounted to Kr. 8,125,196; technical operations coming under the PTT to 6,270,878 and those assumed by NR for its transmissions to 755,159; and administrative expenses to 11,185,361. The main income was drawn from licence fees (Kr. 25,639,048) and the purchase tax on sets (Kr. 6m.).

On 30.6.59 there were 984,982 licence holders and 12,433 listeners exempted from payment of the fee, which was increased from 25 to 30 Kr. a year on 1.3.59.

SWEDEN

Agreement between the State and Sveriges Radio. — An agreement which runs until the end of June 1964 and is renewable thereafter for 5-year periods lays down the provisions governing the rights and duties of Sveriges Radio, the Swedish Broadcasting Corporation.

Sveriges Radio is responsible for the production of programmes for sound radio and television. The administration of other activities related to broadcasting,

⁽¹⁾ See *EBU Review*, No. 58 B, page 26

including the transmission of programmes, suppression of interference and the collection of licence fees, is the responsibility of the Telecommunications Administration. Separate regulations have been drawn up governing the division and coordination of broadcast engineering between the Telecommunications Administration and the Broadcasting Corporation.

Sveriges Radio has the exclusive right to determine which programmes are to be broadcast over Swedish transmitters and to produce programmes within the country for broadcasting over Swedish transmitters. The cost of producing these programmes falls to Sveriges Radio.

According to the agreement with the State, the programmes must be varied, must satisfy different schools of thought on religion, music, art, literature and science, and must provide good entertainment. The presentation of current events must be objective, impartial and in a suitable form. The main emphasis should be laid on national programmes, but the needs of local and regional areas should be considered. The Corporation is further required to produce special programmes for transmission to other countries, both for foreign audiences and for Swedes living abroad. It will cooperate closely with cultural and social institutions; the school broadcasting service, for example, is run in consultation with the National Board of Education and the National Board of Vocational Education.

The broadcasting of programmes containing advertising matter is prohibited.

The Corporation is entitled every year to a share of the income from licence fees sufficient to finance its broadcasting services, in addition to any amounts it may receive in private income and grants-in-aid. For this purpose it submits to the government an annual statement of estimated financial requirements for the coming financial year, after consultation with the Telecommunications Administration and, where necessary, with the National Board of Building and Town Planning, concerning the allocation for different purposes of licence revenue and any grants-in-aid. If during the course of a financial year the Corporation has received more licence money than it has spent on its broadcasting services in the same year, the surplus is repaid to the Telecommunications Administration.

The government is to appoint a special Board of Commissioners ("Radio Council" — *Radionämnden*) to ensure that the Corporation's programmes conform to the provisions of the agreement. Directives governing the work of the Commissioners are issued by the government⁽¹⁾.

If there are grounds for assuming that Sveriges Radio has fallen short of its responsibilities as defined by this agreement, the government is entitled to assign three

investigators to conduct an enquiry. Should the finding of such an enquiry justify the measure, the government has the right to divest the Corporation of its broadcasting services.

SWITZERLAND

1960 Budget of the Société Suisse de Radiodiffusion.

— The General Assembly of the SSR meeting in Berne in December 1959 approved the budget for 1960.

In the field of *sound radio*, the budget estimates that the number of licence holders will rise by 40,000 to a total of 1.41 million.

The gross yield from licence fees (26 francs per set per year) is estimated at 37.3 m. francs. After deduction of the sum of 907,000 francs due to the authors' societies for the use of loudspeakers installed in public establishments and 50,000 francs to the joint PTT/SSR anti-interference fund, the net yield to be shared between the PTT Administration and the SSR amounts to 36.34 m. francs. In accordance with the distribution formula fixed by the Swiss Government, the PTT Administration receives 30% of this amount, i.e. 10.9 m. (280,000 more than in 1959), and the SSR's share is 25.44 m., or an increase of 560,000 in comparison with the 1959 budget.

In addition to its share of the yield from licence fees the SSR receives from the PTT a supplement of 1 franc per subscriber to the *télédiffusion* service, i.e. 313,500 frs.

The budget of the *Direction Générale* totals 1,008,000 francs (a decrease of 21,000 francs) and a further 2.42 m. is necessary for commitments on a national scale: 1.33 m. to the authors' societies, 219,000 to the record industry, 240,000 to the Swiss Telegraphic Agency for its news service, 100,000 for school broadcasting and for the costs of programme exchanges with foreign societies. The share accruing to the Shortwave Service has been fixed by the Central Committee at 1,106,500 francs and the sum allotted to the three societies without studios amounts to 102,300 francs.

The amount remaining at the disposal of the studios of Geneva, Lausanne, Basle, Berne, Zürich and Lugano is 20.8 m. francs (an increase of 1.28 m.) to be divided as follows among the three groups of national transmitters: 44.5% to Beromünster, 33% to Sottens, 22.5% to Monte Ceneri. An appeal has been lodged against this division and is being studied by the concessionary body.

The *television* budget for 1960 has been worked out on an estimated expenditure of 8.3 m. francs (an increase of 300,000 francs) to be financed in the following manner: income from licence fees, 4.55 m. francs; contribution from the Swiss Association of Newspaper Publishers (for the prevention of advertising on television), 2 m. francs; loan from the Confederation, 1.75 m. francs.

The SSR's share of the yield from licence fees represents 70% of the receipt provided for by the Federal Council's message of 9th July 1957 on the financing of Swiss television. This message estimated that there would be 62,000 television licences by the end of 1959 and 80,000

⁽¹⁾ The Commissioners are also authorised to act upon the complaints of organisations and individuals. Since they review programmes only after the broadcast, they hold no censorship powers.

by the end of 1960. The higher of these two figures was almost reached by the end of 1959, thus exceeding by far the official forecasts in 1957. The licence fee remains unchanged at 84 francs per year.

UNITED STATES

Proposed Legislation against Deceptive Broadcasting Practices. — During February the Federal Communications Commission, the agency responsible for licensing broadcasting stations, approved for submission to Congress proposed penal legislation amending the United States Code to abolish abuses in the radio and television industry which have been unmasked in recent months, a process sparked off by the discovery that contestants in quiz programmes had been primed beforehand.

The two deceptive practices at present under fire, which would become criminal offences, are:

- (a) "payola" — whereby, for instance, disc jockeys receive under-cover payments from record companies for playing particular records to increase their popularity, and
- (b) the transmission of broadcasts designed to deceive the public, for example, quiz shows which have been "rigged".

At the same time the Commission issued proposed rules requiring licensees to adopt procedures that would prevent such practices. Since the FCC rules apply only to the licensees of the stations, both the proposed bills are aimed to reach persons other than licensees, i.e. disc jockeys, record companies, publishing firms and distributors, in the case of payola; and producers, directors and independent performers, in the case of programme deception.

The legislation would provide for fines of up to \$ 5,000 or one year's imprisonment, or both, on either charge.

A Congressional sub-committee which has been investigating these offences hopes to secure action during the current session on other far-reaching proposals for the strengthening of the Federal regulations under which the broadcasting industry functions. The committee's findings have prompted it to recommend that the big networks, as well as the individual stations, should be licensed by the FCC at three-year intervals and that "guide-lines" should be laid down for the operation of broadcasting in the public interest. These guide-lines would define what constitutes the public interest and would prohibit the network from furnishing deceptive material to any radio or television station; surrendering control of material to be broadcast to an advertiser, advertising agency, producer or any person other than a licensee; using any broadcasting facility, directly or indirectly, to promote the sale or distribution of the product or service of any company or person in which it has any direct or indirect financial or beneficial interest; or

entering into any contract which would limit the ability of any station licensee to fulfil its responsibility to operate in the public interest.

Further, the FCC should be granted authority to suspend station licences for brief periods (at present the Commission has the power to revoke or fail to renew licences but has so far considered this too drastic a step).

The committee also recommended that the Federal Trade Act should be amended to make station licensees, networks and advertising agencies subject to the criminal penalties for fraudulent or deceptive advertising practices.

The two regulatory agencies (the Federal Communications Commission and the Federal Trade Commission) were criticised for inaction in the committee's report, the FCC particularly for failing to proceed further when the first charges of quiz shows being rigged were brought to its attention in 1958. The committee dismissed the arguments of the FCC that such programme material is protected from Commission interference by the provision of the FCC Act denying any censorship function to the Commission. Towards the end of 1959, however, both Commissions moved into action; the FTC charged a number of record companies and distributors with offering payments to disc jockeys in return for having certain records played; and the FCC ordered a major study of broadcast policies and practices and requested its 5,326 broadcast licensees for information on all programmes and commercial broadcasts since 1.11.58 in which the payment of money or "thing of value" to the stations or their employees was not identified over the air.

The committee's legislative proposals parallel recommendations in a report submitted by the Attorney General to President Eisenhower on 30th December.

The companies responded to the first disclosures of deceptive practices by taking quiz programmes off the air, and they have since been at pains to reveal contrivances used in the filming of television shows, such as "canned" applause. Since then, to quote a few examples, the Television Board of the National Association of Broadcasters has tightened up its Television Code which all subscribing stations must respect; the Columbia Broadcasting System has issued new standards prohibiting free "plugs" and payola in all forms, as well as strict rules for news and comment programmes, and the National Broadcasting Company has set up a new standards and practices department to supervise programming and advertising on the network's facilities.

A further earnest of the industry's good intentions is the recent announcement of an agreement between the three television networks that each of them will present a full hour of high-level educational or cultural programming weekly in evening network "option" (i.e. not "prime") time. The programmes may be sponsored, and there will be no overlapping in the different broadcasts. Commenting favourably on the plan, which he termed a "minimum", the FCC Chairman said it demonstrated the ability of the industry to respond promptly to a felt need.

LEGAL SECTION

SONGS, PLAGIARISM AND COINCIDENCE *

by PAOLO GRECO

Titular Professor at Turin University

1. *Songs, the standard of originality and coincidences in original work.* — 2. *A judgment of the Rome Court of Appeal on the dispute between independent authors.* — 3. *The opinions of the authorities.* — 4. *Plurality of exclusive rights?* — 5. *Creation and first ownership of copyright. Creation in the subjective and objective senses.* — 6. *Incompatibility between two or more autonomous rights and priority of the original author.* — 7. *But can his rights in the unpublished work remain absolute?*

1. In an action recently heard in the Rome Court of Appeal there was argument on an issue of only marginal significance for the practitioner but of some interest and difficulty for the theoretician of copyright. It centred on two songs in which the refrains, both melody and harmony, were note-for-note the same in 24 bars out of 32. The score of one had been deposited by its author with the Italian Authors' and Publishers' Society in 1950, but had, however, remained *unpublished*; the other was put on gramophone records by the CETRA Company and broadcast by the RAI in 1954. The first author accused the second of piracy, while the second maintained that he had composed his own song independently of the earlier one, of which he was altogether unaware. CETRA and the RAI were also cited, but only to cease and desist from using the challenged song, to take note of the Court's decision and to apprise themselves of the proceedings.

A joint derivation from traditional airs or tunes that had otherwise fallen into the public domain being out of the question, and the possibility of mere reminiscences or allowable borrowings (the so-called "*larcins imperceptibles*") being ruled out by the very extent of the coincidence, the Court of Appeal, having regard to the importance of the refrain for the purpose of identifying a song and setting it apart from others, rightly took the view that the coincidence had occurred in the *essential characteristic features* of the two songs and therefore that the only possible alternative lay between piracy and chance coincidence in original work.

Such a coincidence, in the complicated business of composing a work of the intellect—as distinct from ideas in general and inventions in particular—is of course considered to be an extremely rare occurrence, so rare in fact that it can be visualised only as a theoretical exercise

in the light of the theory of probabilities, and perhaps even then only in connection with some purely mechanical, rather than creative, activity. Someone, I think it was Huxley, has said that if a large number of monkeys were to take turns for millions and billions of years in playing with a typewriter, hitting all the letters on the keyboard at random, they would be bound, sooner or later, to have reproduced all the literary works in the British Museum. One might add that if, instead of trusting to blind chance, the monkeys had known something of permutations and combinations, they might have knocked off a few thousand million years, but in either case the period would be of astronomical length, which is reason enough for considering this event to be of unlikely occurrence within a short space of time.

But what can one say of identical results produced by chance in creative work? In the particular case under review an expert witness, comparing music with the other arts, remarked that on the face of it music was confined within straiter limits than the rest because it was compelled to express itself in a language with a rather limited vocabulary, namely the twelve notes in the scale. Since the latter could be combined into scores of millions of melodic variations, however, there were more than enough of them to render it highly unlikely that two composers, working independently of one another and unbeknown to one another—and aside from what can honestly be attributed to *reminiscences*—should come to write the self-same melodic combination, especially with the same harmony and the same rhythm.

The truth is that in works with a high or even medium standard of creative activity, where the imprint of the author's personality and originality is most marked, there may well be similarities in those common backgrounds that are formed of inspiration or reminiscences, but not genuine "chance coincidences" in essential and characteristic features. Matters are rather different where this standard is low or all but non-existent, as it is inevitable that it should be in many types of intellectual productions that by their very nature must be cast in substantially the same mould or follow a more or less set basic pattern—types of work to which, in keeping with the trend of our times and particularly under the pressure of the international Conventions, the label of "works of the intellect" with its characteristic feature of "creation", is increas-

* This article will also be published in Italian in a volume dedicated to the memory of Professor Lorenzo Mossa of the University of Pisa.

ingly being attached in order to bring them within the purview of copyright proper, thereby rejecting the more appropriate category of "ancillary" or "neighbouring" rights. And one may well wonder whether such a lofty, not to say Biblical, concept as "creation", surrounded as it is with an aura of magic and mystery, is any better than a fiction when it has to cover the entire gamut from sublime works like Dante's *Divine Comedy* and Shakespeare's tragedies to run-of-the-mill photographs, everyday documentaries, museum catalogues, and even the detailed stud-books of English racing stables (for which see Copinger and Skone James: *Law of Copyright*, 9th ed., London, 1958, p. 48), moreover under an Act which wisely refrains from referring to "creation" and still more from regarding "creativity" as a feature common to all works and productions in which copyright subsists.

To return to the subject of songs and popular music generally, there is of course no suggestion that they are, as a *genre*, incapable of being creative works, and sometimes creative works of considerable merit. No; the reason for the "coincidences" here is a different one, namely the vast and ever-increasing number of songs that for one reason or another, including sheer money-grubbing speculation, are dumped on the market, even if they are doomed to oblivion after a matter of months or even weeks.

The effect is the usual one of quantity debasing quality and producing such a jumbled hotchpotch of tunes, many of which are hardly original at all, that it is exceedingly difficult to say whether one has copied from the other or whether both have copied with a few minor changes from the same source, which itself is often difficult to identify. This situation a few years ago claimed the attention of M. Castelain ("*Le plagiat musical*" in the *Revue internationale du Droit d'auteur*, Vol. XIII, 1956, pp. 37 ff.), who among other things had occasion to remark that "undoubtedly song composers are sensible to the tyranny of fashion, like lyric writers; and they submit to it all the more gladly because success means substantial profits. Is this coincidence? Is this reminiscence?" Instead he inclines to see in it "a form of competition which is sometimes much nearer to unfair competition than to piracy, because the experts in this field are clever enough to avoid piracy properly so called". It would, however, seem difficult to argue along these lines. It may be that once it is established that piracy has taken place, a kind of "passing off" action will also lie, but it is hard to see how this particular form of tort can arise in the creation of a work of the mind when the extremes of piracy or plagiarism are not present.

2. Perhaps the case referred to the Rome Court of Appeal might have been decided on the basis of piracy, in keeping with the authorities, without the need to tackle the thorny problems raised by the hypothesis of a "chance coincidence" properly so called. It having been proved that one of the two songs was composed before the other, the fact that the second coincided with the first to such a marked extent as in the case of these refrains was enough to support a serious presumption of piracy. The onus would then be on the later composer to prove that the earlier composition was unknown to him (Ulmer: *Urheber- und Verlagsrecht*, Berlin, 1951, section 2, p. 14), which proof was not to hand in this case.

But the Rome Court, although not excluding the possibility of piracy in fact, did not feel able to decide the case in law on the strength of a mere presumption, however strong. It was probably dissuaded from this course by the difficulty of proving a negation (the lack of knowledge of some fact), by the fact that the earlier work had remained unpublished, and lastly by the fact that the earlier composer had confined himself to claiming only the relief to which he was entitled for an *objective* (or unintentional) infringement of his copyright (i. e. an injunction against any further use of the later song, destruction of the devices and contrivances by which the infringement could be continued or repeated, and an account of profits from the infringement), without extending his claim to the reparation of general damages, which would presuppose wrongful intent, and hence piracy.

Instead, the Court addressed itself to solving in substance the question of "chance coincidences" in original work, i. e. to determining what standards Italian law had adopted for the settlement of the dispute that arises between two or more persons who, having written identical works of the intellect independently of one another, each claim copyright in their own works.

In its judgment the Court criticises the view that for the protection of works of the intellect, as distinct from industrial inventions, all that is needed is *subjective* originality, the fact of the work being the product of the creative activity of a "subject" in the sense of an individual author, without the requirement of *objective* (or intrinsic) originality, namely, the non-existence of other similar works. The dispute which arises between authors who arrive at the same "original" results independently of one another, and the necessity of determining the dispute in favour of only one such author on account of the absolute and exclusive nature of the right deriving from the act of creation, are in the opinion of the Court encountered just as well in the field of intellectual works as in that of industrial inventions: the only difference is in the test for settling the dispute. While in the case of industrial inventions this test is simply that of priority of patent (or rather priority of deposit of the patent application), in the case of intellectual works it has to be inferred from a logical interpretation of the legislative system on the basis of the general and specific principles thereof. The general principle is that of the incompatibility of two or more rights of ownership in one and the same thing, and hence in one and the same work of the mind. The specific principle in the field of copyright is that this right comes into existence through the mere fact of creation, which of course includes the fact of *putting the work into material form*, this being necessary to set it apart from the private cogitations of the author, but does not include the fact of *publication*, which the law does not recognise as a proof of prior title. Yet some proof of prior title must exist in pursuance of the above principle of incompatibility, and this is found in another general principle of the system, the maxim *prior in tempore potior in jure*. The Court therefore held that in the event of a "chance coincidence" the exclusive copyright in both its moral and pecuniary aspects accrues only to the person who first creates and "externalises" it, even if he does not publish it.

3. This solution is not devoid of precedents in the authorities, such as the following thought by Runge:

Urheber- und Verlagsrecht, 1948-53, p. 32: "The original character of a work is made up of originality and priority, i. e. it is these features that raise it to the level of a characteristic intellectual work in which copyright may subsist", and it is only in practice that "in copyright, as distinct from the law on inventions, priority has no particular significance, since it is unlikely that two original works will be met with in an identical form".

Similarly Piola Caselli, in his *Diritto di autore*, Turin, 1943, after writing on p. 249 that in copyright it is not a case of *protecting some economic asset as such* but of protecting the intellectual labour that went into it, adds a few pages farther on that "the concept of the creation of a work implies the existence of some intellectual activity that *produces something that did not previously exist*", from which he concludes that the *newness* of the product is from this aspect as well (clearly meaning the "objective" aspect) an *essential requisite* of copyright as it is of patents. Indeed, the author of the present article, in his text-book entitled *I diritti sui beni immateriali*, Turin, 1948, section 75, p. 158, was moved to take a similar line, observing that intrinsic newness, i. e. newness by external standards, has a value of public utility, and it is by this that the creativeness required by law must be measured, since for obvious reasons it is impossible to resurrect a work that has already fallen into the public domain, and it is equally impossible to abolish or restrict for the benefit of a later author the *monopoly* already inuring to the earlier author. Again, along the same lines, see Ascarelli, *Teoria della concorrenza e dei beni immateriali*, Milano, 1957, p. 569.

More widespread, perhaps, are the voices raised in support of the opposing theory—that "subjective" originality alone is enough—by writers of unquestionable competence and renown, cf. Ulmer, *op. cit.*, section 2, p. 13, who observes that in contrast to the position under patent law "copyright infringement can only rest on the use of the works of others, and never on a chance coincidence. Anyone working independently in art and literature need have no fear of infringing the copyright of others" (except that, as stated above, the onus is on the later author to establish his ignorance of the earlier work). Troller, in his *Immaterialgüterrecht*, 1959, Vol. I, p. 416, goes on record to the same effect: "...the work does not have to be new by absolute standards. In contrast to patent law ... the authors of works created parallel to one another can each claim all rights in their own works alongside the others", while Copinger and Skone James (cf. *Law of Copyright*, 9th edition, London, 1958, pp. 143-4), although they find it strange that the recent Act of 1956 should be silent on the matter, have no hesitation in declaring that "there can be no infringement (of copyright) unless use has been made directly or indirectly of the plaintiff's work" and that the moral basis of copyright is, as was stated in 1923 by Lord Atkinson (*Macmillan v. Cooper*), "the Eighth Commandment: thou shalt not steal", for which reason "this is a second way in which copyright protection differs from that afforded to patents". Lastly, Desbois, writing on this very subject of musical compositions in *Le Droit d'auteur*, 1950, no. 141, says "a work is protected because it is the expression of the author's personality, on account of the originality of the personal touch. Yet the author puts just as much of himself into the act of composition

when he unknowingly coincides with a composer who has preceded him as when he thinks up some tune or literary composition, some turn of expression, that was hitherto unknown. The criterion of protection resides not so much in novelty in the absolute sense, but rather in the subjective aspect of that novelty; and the creative act is no less present when the result already exists, provided that the author is unaware of its existence".

4. The problem of "chance coincidences" on which opinions are so divided is, as was said at the beginning, of only marginal importance in practice (though, as has also been pointed out, it is far from negligible in view of the mass of works of low-to-middling originality); in theory, on the other hand, the problem is one of great and, one might almost say, overriding interest, particularly as regards the means of acquiring copyright.

Is the so-called "subjective originality"—which may be multiple in character—sufficient for its acquisition, or is "objective originality"—which is necessarily unique—also required in every case? Is it possible to conceive of the coexistence under the legal system of several independent owners of copyright in the same work, or can one only imagine sole ownership (which of course can be divided *per quote* between joint authors or joint heirs), with the result, as held by the Rome Court, that any dispute that may arise must necessarily be settled on the basis of a test of priority? And what would be the decisive factor in such a test?

These are questions which can only be stated, and possibly defined more clearly, in this article, the purpose of which is essentially descriptive, and which does not attempt to discuss the subject thoroughly and exhaustively.

We can begin with some critical comments on the arguments adopted in the judgment in question, especially on that derived from the incompatibility of two or more independent rights of ownership in the same thing. I do not believe that this will serve the solution adopted by the Court.

It is true that it is possible to envisage an area where copyrights too may overlap, but as will be seen, the standpoint is not precisely the same as in the case of proprietary rights.

The judgment omits to say whether and in what sense it is correct to speak of *property* in connection with copyright, though this is a question which has been debated back and forth for years, the prevailing tendency nowadays being to give rather negative answers. Even those who concede that assets of an immaterial nature, such as works of the intellect, may properly form the *subject matter* of rights, and who consider it impossible to eliminate from the complex concept of copyright some element of a "real" right, in that it subsists in relation to a specified thing existing apart from the human personality (on this point see Greco: "*Beni immateriali*" in the *Novissimo Digesto Italiano*, Turin, UTET)—even those are far from thinking that a true right of property is involved, and even farther from conceiving of it with the features and attributes of property in material things. This view is ruled out if only by the lack of physical substance, which makes immaterial objects susceptible of being *ubiquitous* (or "infinite", the term preferred by Carnelutti: *Teoria generale del diritto*, Rome, 1946, section 56) and hence not necessarily amenable to the

principle which the Romans expressed in the maxim "*duorum in solidum dominium vel possessio esse non potest*" and justified by the very nature of material objects (Paulus, D, 41, 2, 3, section 5): that is to say, the principle that it is impossible for several autonomous and independent titles and rights of ownership to exist in one and the same thing.

In the case of rights arising in relation to immaterial things and more generally in the case of rights of exclusivity this possibility does, however, exist, even though it inevitably implies a restriction or limitation as to the holders of such rights. A statutory monopoly may be granted separately to two or more persons, in which case it produces the situation known as "duopoly" or "oligopoly": the exclusive right indeed arises and is valid as against the community in general, but not in the mutual relations of the duopolists or the oligopolists.

5. Whether the same situation can arise in relation to copyright as a kind of exclusive right is another question. Copyright, as distinct from monopolies properly so called, is no longer acquired (as it once was) by a grant from the Sovereign, when it was in the nature of a privilege which could be extended to more than one holder but is now based on a legal fact, namely the fact of *creation*, to which reference has been made above. Under section 6 of the Italian Act such creation constitutes the original ground for the acquisition of copyright (the obvious intention being to exclude any other form of original acquisition such as usucapion or occupation). Again, section 1 of the recent French Act states that "The author of a work of the intellect shall enjoy an exclusive, incorporeal right available against all comers *through the mere fact of his having created it.*" But most of the modern Acts involve the same principle of equating the ground for acquisition with the fact of creation. It really comes to the same thing when it is recognised that works of the intellect are creations of the mind, that the *creator* of them is called the author and that the author is entitled to the exclusive rights in them. It is as well to stress in this connection that in the report on the latest (1959) German draft Bill to revise the Copyright Act, in reference to section 6, it was thought necessary to explain that after having defined in section 1 works of the intellect as "*persönliche geistige Schöpfungen*" (personal intellectual creations), it must follow that copyright can arise only in the person of their *creator* (thus substituting the term "*Schöpfer*" for the word "*Verfasser*" (author) used in section 2 of the present Act, even though it is added that there is no intention of introducing any substantive change by so doing).

It can therefore be said that in the case of all the statutes which relate the acquisition of copyright to the act of *creation*, the same question arises in the event of a "chance coincidence", namely whether it is conceivable and, above all, whether in the light of the copyright law it is permissible to have a plurality of creations together with a plurality of copyright entitlements and of independent copyright proprietors in respect of works which, since they possess the same essential characteristic features, must be regarded as one and the same work of the intellect. This is a complicated question, more so than one might think from the scant attention hitherto paid to it by the commentators, doubtless on account of its

lack of practical importance in view of the extreme rarity of "chance coincidences" (at least in works that come up to a level at which one can properly speak of creation).

The co-existence of several creations independent of one another in respect of one and the same work is a tenable hypothesis if, bearing in mind the immaterial nature of the thing created (cf. on this point the considerations set forth above), the concept of creation is taken in a subjective sense as referring to the personal activity of the author, whether that activity be original and non-imitative or purely reproductive. The position is different if the concept is taken in its objective sense, in relation to the work *in se et per se*, i. e. considering the thing created apart from the person of the creator. Here again one could speak of concurrent independent creations if, to make matters even more improbable, and again bearing in mind the *immateriality* of the thing, one imagines the "chance coincidences" to be also *contemporaneous* (a thing which, however, is much less improbable in the field of inventions, to say nothing of the contemporaneous "discoveries" for which there are several celebrated precedents). But as soon as there is any question of before and after, or in other words as soon as the "chance coincidences" are separated in time, a number of independent creations in respect of the same work are objectively inconceivable (just as they are objectively inconceivable in the case of inventions), since that which has already been created cannot be created anew (unless it has been destroyed) and thus be original by absolute standards, an argument which also holds good for immaterial entities.

In which of the two senses is the concept of *creation* understood in law? In point of fact it would be more accurate to put the question in another way, because there is no doubt but that creation in the subjective sense is always necessary for the *first* acquisition of copyright: generally speaking (unless recourse is had to a fiction) a person who has not expended creative labour of his own on the work can neither be termed its author nor be the original proprietor of the copyright therein. In this connection section 6 of the Italian Act is even more explicit than other laws, since it makes a point of explaining that creation conveys entitlement to copyright in so far as it represents "a particular expression of intellectual work". For this reason the above question should be formulated in the following words: Is creation in the subjective sense, in addition to being necessary, also *sufficient* in itself for the acquisition of copyright, or does it always presuppose creation or originality in the objective sense as well, in which case copyright could be acquired only on the strength of creation in both its senses, i. e. in the full meaning of the term?

6. Since it is nowhere said which of the two solutions was adopted in the law, the answer must be deduced from a logical interpretation of the legal system. Now, the basic principles of the latter tend to rule out creation in the subjective sense as being sufficient, because if it were the consequences which would flow from it, namely a plurality of entitlements to the copyright and of independent copyright proprietors, would give rise to situations (of duopoly or oligopoly) which were mutually incompatible. The incompatibility here referred to is not

the incompatibility which the judgment of the Rome Court infers from the belief that a work *in se et per se* will not admit of multiple and independent ownership, but rather an incompatibility inherent in two fundamental elements that condition copyright (and also patents), viz. the fact that it will eventually lapse and the work fall into the public domain, and the correlated limitation on its duration. It is unthinkable that if a later creation in the subjective sense should occur after the work has fallen into the public domain, it should be able to revive the "private domain" for the benefit of the subsequent author (and so on, in principle *ad infinitum*). It would hence be necessary, in this case at least, to ensure that the later (subjective) creation could no longer constitute an entitlement to copyright. And if the work has not yet fallen into the public domain, it is equally unthinkable that with each successive creation in the subjective sense the pecuniary right would enter upon a further term of validity for the benefit of the new author, with the similar result of extending, here again possibly to infinity, the duration of the "private domain". In order to avoid this second inadmissible consequence it would be necessary to reduce the term of copyright accruing to the later author to the residual term of copyright then running in favour of the first author, so that the rights of both lapsed on the same date. But it is, to say the least of it, extremely doubtful whether this is a matter which can be brought within the competence of those who interpret the law, rather than those who enact it. And if this doubt is not dispelled, the only conclusion to be drawn from the inadmissibility of the said consequences is that duopolies or oligopolies in copyright are equally inadmissible. That is why the judgment of the Roman Court, which denies in its conclusion that two or more independent copyrights can subsist concurrently in the same work and affirms the need to settle the dispute on the basis of the principle of priority, would seem in itself to be justified.

Still to be established is the legal fact which determines priority. According to the reasoning applied in the judgment in question this fact in the case of intellectual works (as distinct from inventions) is simply that of (materialised) creation *in se et per se*, this word being understood in its fullest meaning of subjective and objective originality, and hence necessarily prior to other possible "creations" which are creations in the subjective sense alone. Publication of a work could never constitute proof of priority in the acquisition of copyright, for before such publication, independently of it and so to speak against it there is the power to withhold publication, which vests at the time of creation and is the first of the powers which make up the content of copyright and is of unlimited duration. Hence the deduction that in the face of this power it is inconceivable that without the permission of the "first" author anyone else could be entitled to publish a work possessing the same essential characteristic features as a previous work, even if the second is the product of independent creative work.

The force of this argument is certainly difficult to contest if one accepts the premiss on which it is based, namely that in contrast to the authorities mentioned at the beginning, whose doctrine appears to prevail, the copyright system unconditionally excludes protection

for those activities which are creative only in the subjective sense, and not in the objective sense as well.

7. But the very case of unpublished works may lead one to doubt whether there is authority for the premiss *de jure condito*, or whether in any event it is right and expedient to preserve it *de jure condendo*, i. e. to preserve a perpetual right in the unpublished work in favour of the first author even as against a subsequent author, thereby shielding the first against any risk, against what might be called the *risk of non-disclosure*, whereas a first inventor for instance, is given no such protection against the risk of secrecy.

What interests would be served by protecting the right in such an occult fashion? Certainly not the interests of the community at large, for while these interests are undoubtedly served (as a general rule, and apart from any question of "merit") only by creation in the objective sense, in that this is the only form of creation likely to swell the general fund of human knowledge, this nevertheless presupposes that the work will be published and not remain in manuscript form and as such inaccessible to the general public.

What is more, such occult absoluteness would not appear to serve any *appreciable* interest of the first author. Publication by a second "author" would not encroach upon the moral rights of the first author, for two reasons: (a) because the subsequent author would be publishing a work of his own, i. e. a work produced by means of his own mental faculties and abilities (or in the words of section 6 of the Italian Act, *an individual expression of his intellectual work*), even if it chanced to coincide with an earlier work; and (b) because it is clear that the subsequent author would have to publish his work in his own name, and not in the name of the earlier author, which would accordingly not be divulged and would hence not be injured in any way.

What might be encroached upon is the interest the earlier author (or his heirs) may have in remaining indefinitely the sole judge as to whether to enforce the rights subsisting in the unpublished work *against any work which happens to coincide accidentally with his own*—the work he had not thought fit to publish—to the point where he could for ever prevent it from becoming part of the general stock of human knowledge and eventually falling into the public domain. But one may well ask whether this is an interest deserving of such absolute protection, and whether its assertion in any form, even under the cloak of "*droit moral*", does not imply an abuse of rights.

As regards the principle proclaimed in the Italian Supreme Court judgment of 17 January 1955 (judgment No. 84, published in *Il diritto di autore*, 1955, p. 463) and cited by the Rome Court of Appeals, to the effect that unpublished works are eligible for stricter protection than published works and that even the trivial borrowings normally permitted become unlawful in these circumstances, it should be remembered that this principle was predicated precisely on the hypothesis of plagiarism or infringement, and is hence extraneous to the question discussed above, which is that of *chance coincidences in original work*, with which that hypothesis by definition has nothing in common.

It is clear that if, on the one hand, these considerations

on the non-absolute character of the rights in an unpublished work with respect to chance coincidences are recognised to have merit, and if, on the other hand, it is agreed that it is demonstrably impossible for two or more independent copyrights to subsist concurrently in the same work, or rather in a work having the same characteristic features, one can only conclude that the current theories on the effect of publication of a work of the intellect need to be reviewed, and that publication should be recognised as one of the elements conferring entitlement to copyright which might settle possible disputes between a number of independent authors.

A revision leading to such recognition, and hence bringing copyright law more into line with patent law, might not be so heretical as it seems at first sight when one thinks of the cases in which publication already constitutes for certain classes of works a factor which *conditions* the persistence of the pecuniary rights attaching to copyright, namely their duration (cf. sections 26 (2), 27 (1), 29, 31 and 32 of the Italian Copyright Act; Article 7 (4) of the Brussels Revision of the Berne Convention, not to mention the role which first publication plays in the last-mentioned instrument in conferring international protection).

NEWS AND INFORMATION

DENMARK

Judgment concerning Prerecorded Broadcasts of Protected Music. — In April 1952, the Nordisk Copyright Bureau, which controls directly the mechanical rights of Danish composers and indirectly, by virtue of agreements with the TONO (Norway), STIM (Sweden) and BIEM, the mechanical rights of foreign composers, put in a claim to Danmarks Radio for the payment of fees in respect of broadcasts of protected music by means of recordings made by the broadcasting organisation itself. The claim was rejected by Danmarks Radio on the grounds that in its view such claims could find no support in the Danish Copyright Act of 26th April 1933. In August 1958, the NCB renewed its claim and demanded that Danmarks Radio should sign an agreement with it concerning the recordings of music made by Danmarks Radio for its own broadcasts, the recordings of musical programmes for despatch to other broadcasting organisations, and the use of recordings received by Danmarks Radio for broadcast purposes from foreign broadcasting organisations. This claim was again rejected by Danmarks Radio, the latter maintaining its opinion that such claims were not legally justified: the making of recordings by the broadcasting organisation for its own broadcasts is not prohibited by the Copyright Act; the use of recordings legally made by third parties cannot be prohibited by the holder of the mechanical rights; an agreement concerning the despatch of recordings to other countries is of no interest to Danmarks Radio, as it would be in contradiction to current contracts with the musicians' unions which only allow the broadcasting organisation to rebroadcast its own recordings to a very limited

extent. The Danish organisation also pointed out, quite naturally, that it had a contract for *petits droits* with the Danish collecting society, KODA.

The NCB then prohibited Danmarks Radio from making any use whatsoever of the works in the NCB's repertoire, and when this ban was repudiated by Danmarks Radio, it brought the matter into court, putting forward the plea that the latter should be prohibited from making recordings of protected musical works controlled by the NCB.

In the judgment handed down by the Eastern High Court on 4th December 1959, the petition was dismissed, the Court deciding that by its contract with the KODA Danmarks Radio had obtained the right to broadcast in consideration of a fee the musical works covered by the contract, and further that, according to the wording of the current legislation on copyright, this contract should also be understood to sanction broadcasts by means of recordings made by the defendant, without the composers represented by the contract being able to claim another separate fee from the broadcasting organisation.

Thus, the judgment confirms Danmarks Radio's interpretation of the provisions of the Copyright Act, to the effect that the authors are entitled to protection against the mechanical reproduction of their works, but not against the making of copies intended exclusively for broadcasting which, for its part, is lawful in pursuance of a special contract.

The decision of the High Court is not final, however, as the NCB has appealed to the Supreme Court.

Ejnar JENSEN
Head of Secretariat,
Danmarks Radio

SWITZERLAND

Extent of the Performer's Copyright. Judgment of the Federal Court. — In view of its importance, we are publishing below the full text of the judgment which was summarised briefly in our last number (page 38).

- "1. *Performing artists are not authors (considerandum 2 [b]).*
2. *Section 4 (2) of the Copyright Act purports only to protect manufacturers of records, music boxes and similar instruments against unlawful competition (consideranda 2 [c] and [d]).*
3. *To what extent is the exclusive right of sale exhausted by the first lawful sale? (considerandum 3 [b]).*
4. *Section 58 (3) of the Copyright Act protects composers only (considerandum 3 [c]).*

Having examined the written pleadings, from which it appears

As to the facts:

A. The firm of N. V. Philips Phonographische Industrie, of Baarn (Netherlands) manufactures gramophone records which it markets under the label of Philips. For its recordings it procures the assignment of the copyrights which may accrue to the performers. It has given Philips A.G. of Zürich exclusive rights to sell its records in Switzerland and Liechtenstein and has transferred to this company and for the same territory the rights it considered it had acquired from the performers.

Armand Torre, who is in business as a stockist of household appliances and radio apparatus, has imported Philips records from abroad and retails them in Switzerland.

B. Philips A.G. brought a copyright infringement action against Torre in the Genevese Civil Court of Justice, asking the Court to enjoin the defendant from selling the imported records, to order the seizure and destruction of his stock, to order him to pay damages of 20,000 Swiss francs and order the judgment to be published.

Torre submitted that the claim should be dismissed.

Giving judgment on 9 June 1959 the Court of Justice upheld the claim in principle but awarded only 2,000 Swiss francs damages to Philips A.G. and refused publication of its decision. In giving its reasons the Court confined itself to observing that under sections 4, 9, 12 and 58 (3) of the Swiss Copyright Act and Article 4 of the Berne Convention for the protection of literary and artistic works, performers' rights were protected and transferable and conferred on their holder the sole right of exploitation in the country for which they were granted. The Court concluded that Philips A.G. succeeded in its claim by virtue of sections 42 and 54 of the Swiss Copyright Act.

C. Torre appealed to the Federal Court asking that the judgment be set aside and reiterating his earlier submissions. He denies the existence of the copyright claimed by Philips A.G. and claims that in any event performers do not enjoy any such right in Switzerland in respect of works published abroad.

The plaintiff entered a counter-appeal, asking that its

damages should be set at the amount of 20,000 Swiss francs.

Each of the parties proposed that the appeal of the other be dismissed.

Considering in law:

1. In its judgment in *Schweizerische Rundspruchgesellschaft und Radiogenossenschaft Bern v. Turicaphon A.G.* of 7 July 1936 (RO 62 II 243), the Federal Court held that section 4 (2) of the Swiss Copyright Act vested a copyright in a performer who plays or performs an artistic work with a view to its being recorded. It added that this right is transferable and that, in the nature of things, the presumption is that it is assigned to the record manufacturer in so far as such transfer is necessary for the sale of the merchandise. Moreover, in virtue of Article 4 of the Berne Convention of 9 September 1886 for the protection of literary and artistic works, as revised in Rome on 2 June 1928, performers' copyright in Switzerland likewise vests in foreign performers who are nationals of one of the countries of the Berne Union in respect of their recordings if first published in one of the said countries.

However, the judgment in the Turicaphon case dates back more than 20 years and was handed down in a field of law that was very new and still in a state of flux. There is good reason, therefore, to review the legal issues settled by that judgment, particularly as it has come in for serious criticism by the commentators.

2. Section 4 (2) of the Swiss Copyright Act treats the adaptation of a literary or musical work to a mechanical contrivance through the agency of performers in person in like manner as if it were a reproduction, which is protected in the same way as an original work. This provision is aimed mainly at recording on gramophone records.

(a) If the Act is construed in the historical way, it can be said, as the Federal Court did in the Turicaphon case, that section 4 (2) of the Swiss Copyright Act bestows a copyright on performers whose performances are recorded. In the words of the Message of the Federal Council of 9 July 1918 (FF 1918 III p. 617), the Act protects in the case of a recording "the individual work of the performer" and, in the making of musical boxes and similar instruments, "the re-arrangement of the work to be adapted denoting originality capable of protection". It follows that, as the Federal Council saw it, the protection had as its subject an artistic pursuit and not a piece of technical work. The rapporteurs in the upper and lower Houses of the Federal Parliament also expressed this opinion, conveying the impression that performers had a copyright in their recorded artistic performances (*Bull. stén.* 1920 CE p. 369 and 437, 1922 CN p. 263).

Serious misgivings arise, however, if some thought is given to the purpose of Section 4 (2) of the Copyright Act and its place in the system of rights in immaterial objects.

(b) According to the settled practice of the Federal Court (RO 85 II 123 and cases cited), a work constitutes a work of art only if it is an original creation; it must therefore appear as a new work of the intellect, embody-

ing a creative idea or the personal expression of a thought. Similarly, works at second hand, which are given protection by section 4 (1) of the Copyright Act, must also possess originality.

Certain writers (cf. Troller: *Immaterialgüterrecht*, I, pp. 442-7; *Jurisprudenz auf dem Holzweg*, pp. 63 ff.; cf. also Schorro: *La protection de l'artiste interprète*) stress the necessity of the performer's contribution in order that a dramatic or musical work may be expressed to perfection. In Troller's opinion this co-operation is of a creative nature, unless it is no more than a performance directed in detail by another "interpreter", such as the conductor of an orchestra or the director of a film or stage play.

Admittedly, the performer's contribution is needed to enable the public fully to appreciate the dramatic or musical work intended for its enjoyment. Besides, the performance is often characterised by outstanding artistry, great talent or even genius. But it is not in the nature of creative work and constitutes neither an artistic work nor even a work at second hand within the meaning of section 4 (1) of the Copyright Act. Whatever the extent and the quality of his contribution, the performer does no more than lend form and expression to an already existing work. He is bound by the letter and the spirit of the work he performs and the more faithfully and submissively his performance expresses the thought or the feelings of the author, the more valuable it will be. The performer only uses his artistic gifts and sensitivity to seek out and express the spirit underlying the work he performs. Hence he does not beget a new work embodying a creative idea and cannot be taken to be an author (on this point see judgment of the German Federal Court of 21 November 1952, in Schulze: *Rechtsprechung zum Urheberrecht*, BGHZ 3, p. 3; Ulmer: *Urheber- und Verlagsrecht*, p. 319; Runge: *Urheber- und Verlagsrecht*, p. 340; Voigtländer, Elster & Kleine: *Urheberrecht*, p. 44; Möhring: *Die internationale Regelung des Rechts der ausübenden Künstler und anderer sogenannter Nachbarrechte*, pp. 17 ff.; Süss: *Das Recht der ausübenden Künstler, der Schallplattenhersteller und des Rundfunks*, in *Schriftenreihe der Internationalen Gesellschaft für Urheberrecht*, Vol. 11, pp. 61 ff.; Overath: *Urheber und Interpret in der Musik*, *ibidem*, pp. 44 ff.; Plaisant: *Propriété littéraire et artistique*, in *Juris-classeur civil*, appendices, book 5, notes 41 to 47; Verena Lüdi: *Rechte der Interpreten musikalischer Werke bei mechanischer Fixierung ihrer Leistung*, in *RSJ*, 1957, pp. 322 ff.).

In the same way, the more recent enactments on the subject of copyright (cf. in particular sections 66 ff. of the Austrian Act of 9 April 1936 and sections 80 ff. of the Italian Act of 22 April 1941) do not grant a copyright to the performers but give them a protection *sui generis*. Similarly, the draft international Conventions prepared by a round-table committee of experts and a committee appointed by Unesco and the Berne Union (the Rome preliminary draft of 1951 and the Monaco draft of 1957) make no provision for the protection of performers *qua* authors; they instead grant them special rights known as "rights ancillary to copyright" (cf. *Le droit d'auteur*, 1951, p. 140, and *L'artiste exécutant, le fabricant de phonogrammes, le radiodiffuseur*, supplement to *Le droit d'auteur*, 1957, p. 131).

Moreover, if it were desired to bestow a copyright on the "creative" performer, it would often be very difficult to distinguish between those who were creative and those who were not. Probably soloists, orchestral conductors and theatrical directors would qualify, and it is likely that the creative label would be refused to members of a symphony orchestra and extras in a theatrical cast. But the line would be very hard to draw in many cases, such as small chamber orchestras, quartets, etc., first violins and the like who are given solo parts, opera singers, actors, etc. This system would thus create grave legal insecurity.

It is true that in the Turicaphon case the Federal Tribunal held that the performer should be protected as an author in order to enjoy a "*droit moral*" in his performances and thus be in a position to demand that a faulty recording be re-made or to prevent its being put on sale. But this argument is not in reality a decisive one. In the first place, the record manufacturer has every reason not to publish a recording of a poor performance; in the second place, the performer can claim a "*droit moral*" derived from Article 28 of the Swiss Civil Code (cf. Du Pasquier: *Les droits du fabricant sur les disques de gramophone*, pp. 76-7; Plaisant, *op. cit.*, book 5, footnote 51.).

(c) The fact remains that section 4 (2) of the Copyright Act protects the recorded performance, although the performer is neither an author nor even an adapter. In fact, however, this protection is meant not for the performer but for the record manufacturer.

(aa) Section 4 (2) of the Copyright Act was patterned on Section 2 (2) of the German Act of 19 June 1901, as amended by the Act of 22 May 1910 (cf. Message of the Federal Council of 9 July 1918, FF 1918 III p. 616). However, it is unanimously recognised by the Courts and by the legal writers in that country that the legislature did not intend to protect the performers. By means of section 2 (2) of the Act of 19 June 1901 it had sought to give protection to the record manufacturers, especially against the unauthorised copying of their recordings. It was for this reason that it resorted to the device of protecting the performers, the presumption being that their rights would be assigned to the record manufacturers (judgment of the Reich Court of 14 November 1936, reported in Schulze: *op. cit.*, RGZ 8, pp. 9 and 10). But this is a fiction the artificial character of which is denounced by all the legal writers (Ulmer: *op. cit.*, pp. 158 and 320; Runge: *op. cit.*, p. 343; Voigtländer, Elster & Kleine: *loc. cit.*; Süss: *op. cit.*, pp. 46 ff.; cf. also the judgment of the German Federal Court of 21 November 1952, *loc. cit.*) It is generally agreed that the protection given to record manufacturers by this device purported to safeguard them against unfair competition (cf. Marwitz & Möhring: *Das Urheberrecht*, p. 47; Süss: *op. cit.*, p. 55; judgment of the Reich Court of 14 November 1936, *loc. cit.*).

(bb) The same applies in Swiss law, as is confirmed at once by the nature of the thing protected by section 4 (2) of the Copyright Act.

The fact of the matter is that this provision does not protect the performer so long as his performance is not recorded. The actual performance, that is to say the real

service rendered by the performer, is not covered by this clause, which for instance does not safeguard the performer against a recording made without his knowledge.

Moreover, at the time the Act was written the legislature could only have had in mind when enacting section 4 (2) the protection of "contrivances" against unlawful copying, that is to say, a safeguard accruing to the record manufacturer (Streuli: *Fiche juridique suisse* No. 635a, p. 7). The other exclusive rights provided for in section 12 of the Copyright Act were either ruled out or pointless. There was no value in protection against publication or circulation, since the recordings in question were made for the express purpose of sale. Moreover, section 21 of the Copyright Act permitted the public performance referred to in section 12 (3), while protection against broadcasting could not have been considered by the legislature and was instituted by the Federal Court in the Turicaphon case only to fill a gap in the law, in pursuance of Article 1 (2) of the Swiss Civil Code.

(cc) Moreover, in the Turicaphon case the Federal Court held, as the German Courts had done, that assignment of the performer's rights to the manufacturer must be presumed, since such a transfer was "in the nature of things". A presumption of this kind, however, is not based on any rule of law, and is at variance with the general principles of the law. The reason why it was allowed is because it is in keeping with the internal logic of section 4 (2) and is necessitated by the very purpose of that provision. These decisions demonstrate that the beneficiary of the protection is not the performer—or, in the case of musical boxes, the transcriber—but definitely the manufacturer.

Of course, publication of any work implies an assignment or transfer of rights to the publisher. The author's rights, however, come into existence before publication; they enable him to restrain publication or to specify the manner of publication. On the contrary, the rights derived from section 4 (2) of the Copyright Act come into being upon the creation of the *corpus mechanicum* on which the sounds are recorded. Consequently, in the context of the Act, assignment is a natural feature of the contract between the performer and the manufacturer; the latter is in reality the proprietor of the virtual right, even before this right attaches to a specific thing.

(d) Hence the vesting of a copyright in the performer is irreconcilable with the fundamental principles of copyright.

Furthermore, the purpose of section 4 (2) of the Copyright Act is not to confer a copyright or other form of protection on the performer, but rather to protect the manufacturer against piracy of his goods. As it did not appear that this end could be attained directly, the legislature adopted the expedient of copyright: the work of a record or musical-box manufacturer is hardly of a markedly artistic nature and besides, such manufacturers are usually corporations or companies which cannot be the first owners of copyright in Switzerland (section 8 of the Copyright Act; RO 54 II 54, 74 II 112). Someone then hit upon the idea of creating the right in the person of the individual whose performance is recorded or who transcribes the tune to be put on to the rollers. But, as "the nature of things" demands,

this right is immediately transferred to the manufacturer, who is the true beneficiary and the person whom the law seeks to protect.

Nevertheless, this construction is a pure fiction, and section 4 (2) of the Copyright Act cannot therefore be construed by conforming in a servile manner to the artificial system it created. Instead, to discover its meaning and its scope one must look to the purpose which this provision was intended to fulfil and to the interests it was actually meant to protect. Now, as has been mentioned above, section 4 (2) of the Copyright Act is intended to protect the manufacturer against the unlawful copying and sale of his goods. It is related to the law on competition and by no means enshrines a copyright belonging to the performer. The amending Act of 24 June 1955 which, by altering section 12 and repealing section 21 of the Copyright Act extends protection to public performance and broadcasting, likewise confers rights on the manufacturer alone.

Accordingly, although the plaintiff cites section 4 (2) in this case, it does not do so on the performers' behalf, who are in no wise injured by Torre's acts. It does not even set out to protect the manufacturer, for in point of fact the records sold by the appellant are genuine Philips records and were sold to Torre's supplier by the parent company in Baarn. In reality, the plaintiff merely seeks to reinforce a contractual right in virtue of which it enjoys, as against the manufacturer, the exclusive sales rights in Switzerland by giving it force *erga omnes* as a right *in rem* through the agency of copyright.

In conclusion, therefore, the Court must deny the existence of the copyrights on which the plaintiff bases its claim.

3. (a) However, section 4 (2) of the Copyright Act protects mechanical recordings as if they were original works and thus confers rights on the manufacturer. It is true that the plaintiff has not invoked a right in the manufacturer and claims to proceed as the assignee of the performers. But this matters not; while the Federal Supreme Court of Appeal is bound by the pleadings of the parties, it is not bound by the grounds they adduce and must decide according to the rule *jura novit curia* (Article 63 [1] OJ).

The issue is therefore whether section 12 (2) of the Copyright Act gives the plaintiff the exclusive right to sell Philips records in Switzerland and whether Torre has infringed this right, although the records retailed by him were lawfully made and purchased abroad.

(b) The defendant answers the last-mentioned question in the negative, arguing that the exclusive sales rights are abated by the first lawful sale, i. e. the bargain he made with his supplier. This plea will not stand up. It is admittedly accepted generally that the right to put the work on sale is exhausted by the first lawful disposal thereof (cf. *Entscheidungen des Reichsgerichts in Zivilsachen*, Vol. 63, pp. 397 ff; Ulmer: *op. cit.*, p. 145 and cases cited); but in any case resale is lawful only if it is covered by the right of the person putting the copies into circulation. The right is exhausted only to the extent that it has been exercised. Hence when the proprietor of the exclusive sales rights has parted with them in respect of a given territory, a person acquiring a copy of the work in that territory cannot resell it elsewhere

(cf. Ulmer: *op. cit.*, p. 145; Marwitz & Möhring: *op. cit.*, p. 117).

(c) Section 58 (1) of the Copyright Act provides that if lawfully made copies of a work are put into circulation outside the territory for which the copyright proprietor has authorised their sale, this shall not constitute an unlawful act within the meaning of section 42. Section 58 of the Copyright Act thus derogates from the absolute nature of the copyright and authorises in principle the distribution in Switzerland of copies of the work notwithstanding any territorial limitations that may be imposed by the holder of the copyright. It lays down the general principle that such a limitation of the publishing rights has no effect *erga omnes*.

Nevertheless, section 58 (3) of the Copyright Act makes an exception to this principle by providing that section 58 (1) shall not apply to mechanical contrivances to which literary or musical works are adapted. This exception was necessitated by Article 13 of the Berne Convention which gives the composers of musical works the exclusive right to authorise recording and specifies in paragraph 4 that recordings imported without a licence from those concerned into a country where they are not lawful are liable to seizure. It was solely on account of this minimum standard of protection enacted by the Berne Convention that the Swiss legislature had to promulgate section 58 (3) of the Copyright Act (Message of the Federal Council of 9 July 1918, FF 1918 III p. 672; *Bull. stén.*, CN, 1922, p. 312). It must therefore be concluded that unless expressly stated, section 58 (3) of the Copyright Act does not go beyond Article 13 of the Berne Convention.

Yet the institution of a copyright vesting in performers is unknown to this Convention. Article 13, which vests in the composers of musical works the exclusive right to authorise the recording thereof, is therefore of no application to the performers and relates only to the composers, whom it protects against the manufacturers and retailers of records. Similarly, in the absence of anything to the contrary, the exception made by section 58 (3) to the general principle in paragraph (1) must be construed only in relation to the territorially limited licences granted by authors or composers or their assigns. It does

not protect the manufacturers of phonographic records who, as has been shown above, are not copyright owners but merely the beneficiaries, under section 4 (2) of the Copyright Act, of rights having to do with unfair competition. These manufacturers and their assigns can therefore not rely on copyright to uphold private monopolies and to give to exclusive sales agreements, which belong to the sphere of contract and rights *inter partes*, the reinforcement of protection available *erga omnes*.

Consequently, as the respondent could not rely on section 58 (3) of the Copyright Act, the acts for which Torre is blamed are not unlawful. The action must therefore be dismissed.

On these grounds,

The Federal Court:

1. allows the main appeal, sets aside the judgment appealed from and dismisses the claim;
2. dismisses the cross-appeal;
3. orders the plaintiff to pay—
 - (a) legal fees of 1500 Swiss francs;
 - (b) the registry fees of the Court, amounting to 84 francs;
 - (c) petty office costs, amounting to 32.70 francs;
 - (d) an extra-judicial award of 2000 francs to be paid to the defendant in respect of his costs on appeal in the Federal Court;
4. remits the case to the Genevese courts for them to decide anew the question of costs in the cantonal court;
5. notifies the present judgment to the representatives of the parties and to the Civil Court of Justice of the Canton of Geneva."

(The judgment as reproduced above appeared in the French original in the official *Recueil of judgments of the Swiss Federal Court*, 1959, Volume II, No. 6.)

BOOK REVIEWS

Die materielle Sicherung des Urhebers als rechtspolitisches Problem, by Werner Reinhardt, LL.D. Doctorate thesis submitted to the Faculty of Law in the University of Freiburg-im-Breisgau, 1958 (roneoed document).

I am indebted to Professor Hans Thieme, the reporter on and doubtless also the director of the above-mentioned thesis, for the opportunity of drawing Mr. Reinhardt's important work to the attention of readers of the *Review*. I do so with all the more pleasure as the theme is a highly

topical issue which is dealt with both in breadth and in depth. Only too often legal theses are monographs designed to display the author's prowess in reasoning from the host of references and authorities he has painstakingly dug up on some barren or downright recondite subject, and the temptation to lapse into otiose scholasticism besets him at every turn. In this thesis there is nothing of the kind. The intellectual faculties brought to bear on it are remarkably commensurate with the subject to which they are applied. Mr. Reinhardt has eschewed the exhibition of pure virtuosity, though that would have

amply demonstrated his ability; instead he has chosen, probably on Professor Thieme's advice, to get to grips with a subject of immediate practical relevance on which he has a chance of suggesting the courses that Parliaments might adopt. This, incidentally, is the right approach to academic investigation in a university setting. Wherever possible the younger men must be enrolled in the ranks of the researchers and given creative work to do. Not all, perhaps, will make a decisive contribution to legal thinking on the problems assigned to them, but the collation and classification of material with which to build a given legal mechanism are in themselves useful activities on which official action can be predicated.

The purpose behind Mr. Reinhardt's thesis is to enhance the author's material security, in the widest sense of the term. To set such a goal is to affirm by implication that the present state of affairs is unjust, that authors as gainfully occupied members of the community are ill paid. Very sportingly Mr. Reinhardt has not tried to evade this "pre-question", as the politicians say; he has examined whether the accusation is justified, putting the question in its bluntest terms: does poverty engender art? The directors of powerful authors' societies may find it hard to stomach such a degree of callous indifference, but Mr. Reinhardt is only repeating—and, be it said, at once dismissing—a remark that is quite frequently heard. Against it he calls to witness one of the greatest artists of all time, Beethoven. In theory, however, I am inclined to think that there is something to be said on both sides, despite the cynicism that may be read into such a statement. For the increasing proliferation of literary and artistic works results in the offer outrunning the demand, while quality suffers from the mass production that we see on all sides. Long ago Schopenhauer complained of the rising tide of mediocre writing that threatened to engulf his contemporaries, and even went so far as to assert that authors' fees and the prohibition of piracy "corrupted literature". That, no doubt, was meant *cum grano salis*; nevertheless the glut of poor-to-middling works is an evil in itself, and we are infallibly heading in that direction by proclaiming that literary and artistic toil should be a trade that enables one to earn a decent living. It is not sound policy to make an organised occupation out of an activity which, when worthily pursued, allows the mind and soul to soar to sovereign heights. When a writer of the calibre of Léon Savary maintains that the finest works were conceived in want, or at least in hardship and anxiety, this remark, in which Schopenhauer might recognise a pupil, can hardly be overlooked.

For all that, it would be a kind of sadism on the part of the community to inflict the pangs of hunger on artists, on the pretext of whetting their genius. We do not think it necessary to put out the eyes of a nightingale to make its song more haunting. Musset's famous lines on man nurtured in pain are enough; we can concede that suffering in one form or another may be the common lot, but we draw the line at administering it in measured doses to a certain class of our fellow-men. Of old the moneyed

patron made it his business to support intellectual creators in their struggle for fame and physical subsistence; little by little these benefactors became fewer, and it was necessary to pass legislative measures of a more anonymous nature to fill in the gaps that patronage could no longer cover. This was the work of the 19th century, and all the principal copyright enactments, especially the German ones, date back to this period as regards their basic contents, if not their most recent formulation. It is now being realised that despite the safeguards they were given, the authors are handicapped in the economic struggle. The individualism that was always widespread among them may have done something to weaken their position vis-à-vis the "consumers" of intellectual works; I fancy, however, that two other factors were more important.

Primo, the ever more marked industrialisation in everyday affairs. Nowadays we possess almost unlimited technical facilities for turning literary and artistic works to account. The operators and promoters of these processes had the sense to get organised in good time, and they supplied the public on reasonable terms with the raw material bought from the authors at a price calculated in such a way as to minimise its incidence on the cost of the finished product. The businessman, i. e. the intermediary between the author and the user of the work, found it only too easy to explain to his customers that, were it not for copyright, he would be in a position to let them have the goods cheaper. The public was therefore instinctively on the side of the go-between industrialist against the original producer, even though experience often showed how slight was the difference in price between a copy of a work in copyright and a copy of a work in the public domain.

Secundo, with the passage of time the number of works that have fallen into the public domain, and indeed the number of works in general, inevitably increases. Every author has to cope with keener competition—competition from the living and from the dead. Admittedly, it is possible with modern advertising methods to "promote" an author or composer in much the same way as a depilatory cream, but the effect of this huckstering rapidly wears off, and for every name that is "put across" by the close-ups of more or less specious propaganda, there are a dozen or a score who are relegated for no particular reason to lasting mediocrity or doomed to immediate oblivion. Mr. Reinhardt also refers to the baneful influence of the illustrated weeklies and magazines on the intellectual level of the reading public and, one is tempted to add, that of a certain type of songs on the musical taste of the listener. For the good author or composer all these are so many stumbling blocks on the road to success.

Lastly, the taxation pattern in several countries is such that the exchequer may swallow up in one year fees that have taken years and years of toil to earn. In this connection Mr. Reinhardt quotes Bernard Shaw's quip to the

effect that the State granted him a pittance in exchange for the (involuntary) relinquishment of his income, and the definition of Jean-Paul Sartre: "The successful dramatist is a man loaded down with arrears of taxation, and forced to write another play to pay off what he owes to the State on his previous works".

In these days when so much heed is paid (as it should be) to social security—as witness the congress on social law held at the Brussels Exhibition in 1958, at which this comparatively new branch of the law really came into the limelight—authors and composers, who are self-employed and whose output cannot be brought within the confines of a regular occupation, are largely denied the benefits of professional cohesion.

Largely, perhaps, but not entirely. I fancy there is here a slight exaggeration in Mr. Reinhardt's statement of his case. The administration of copyright by a society dates back to Beaumarchais, i. e. the end of the 18th century, and it has made constant headway since then, first in France and then in all the countries where literary and artistic pursuits are held in honour. In the course of his book Mr. Reinhardt has made it his business to correct his over-sweeping observation at the outset regarding the lack of organisation among the authors. At the end of his thesis he makes a very complete and accurate review of the copyright collecting societies that now exist, the members of which not only receive fees in proportion to the audience which each participant secures but even retirement pensions. Of course—and here Mr. Reinhardt is right in stating that authors are at a disadvantage by comparison with many other professional workers—the earnings of a writer, musician, painter or sculptor are highly uncertain, unless he is the salaried employee of a firm. But that applies to all the professions, and it is basically what makes them great. None of the professions can guarantee its devotees a stable and decent average income. The spirit bloweth where it listeth, and the Pactolus is every bit as freakish. One cannot entirely eliminate from modern life the influence that was attributed of yore to Fortune, that most inscrutable goddess.

To hark back to our theme, there are varying degrees of administrative debility among the authors themselves. The music composers and the playwrights are relatively well off, because the public uses of their works are effectively policed by the performing right societies, which levy and distribute the fees and exercise a general control which no individual author could impose by himself. On the other hand, painters, sculptors and writers have little or no collective backing, and for every Bernard Buffet or Françoise Sagan there are many with as much talent or more who have to resign themselves to professional stagnation. What with the gilded success of the privileged few to whom modern high-pressure publicity has given seven-league boots for the race to fame, one can understand the lawyer's desire to even out the chances by legislative action.

The central part of Mr. Reinhardt's thesis is a critical review of the German copyright laws, with proposals *de*

lege ferenda. The raw material is abundant enough: the preparatory steps towards a complete overhaul, which began around 1930, include two government drafts dated 1932 and 1954, another "academic" draft dating from 1939 and prepared by the Academy of German Law, and a one-man effort published in 1933 by the late Willy Hoffmann. Finally the Ministry of Justice of the Federal Republic of Germany put out in May 1959 a considerably revised version of the 1954 *Referentenentwurf* in order to accommodate some of the rich harvest of criticisms that this draft had brought forth. (When writing his dissertation Mr. Reinhardt did not have before him this recent document, on which an able commentary has already appeared in the *Review*.) Basically, the inequality in the lot of the authors which is apparent in the above-mentioned two examples (among others) is due to nature's design—or at least its practice—of distributing its talents somewhat unevenly. In the economic field one cannot eliminate the effect of the differences inherent in the infinite diversity of mankind. But it is possible, and indeed desirable, to seek equality on the plane of the *Rechtsverwirklichung* so dear to the Germans. We therefore hope that all classes of intellectual "creators" will be given theoretically equal possibilities of making money. The collecting societies give real meaning to performing rights and almost as much to theatrical rights as well. Joint enforcement practices ought to be extended in the direction of literary copyright and in that of artistic copyright. Why should there not be granted a borrowing right, for instance, which would accrue to the authors of works taken out from lending libraries? It is not an invincible argument to say that once a copy of the work has been sold, the author has exhausted his rights in that copy. If the purchaser, in this case the lending library, derives a pecuniary benefit from his purchase, the author might well share in this enrichment on the principle that any exploitation of a work which brings in revenue to the person exploiting it automatically entitles the author to a share. The same line of argument would justify the artists' "*droit de suite*", the right to a share of the sales price when their paintings, drawings, sculptures, etc. change hands and increase in value. The *droit de suite* is already with us, and operates in France, Belgium and elsewhere.

Mr. Reinhardt is a firm supporter of these reforms and gives the case for them. It may however be observed that, if they are justified, it would be exceptional and because of the privileged status of copyright among the other branches of law. It is because the work reflects the personality of its author that it is desired to associate him with the career of his "offspring", to use the well-worn metaphor (which incidentally is not strictly appropriate). But it is clear that this privileged treatment is something that is an exception to the general rule that the maker of an article no longer has any rights in it once it has been sold. The borrowing right and the *droit de suite* would in theory improve the circumstances of those to whom they accrue. But are these expectations borne out in reality? The question has occasionally been asked. French and

Belgian experience with the *droit de suite* has been fairly encouraging, and the Brussels Literary and Artistic Conference in 1948 did not balk at introducing this right, on the basis of reciprocity, into the relations between States belonging to the Berne Union. Perhaps it would be better to consider the position in each country separately, because what suits one country does not necessarily appeal to another. In any case, we are indebted to Mr. Reinhardt for his thoughtful review, which he also extends to the *domaine public payant* as a device for meeting competition from the graveyard. Here too the conclusion will have its territorial limitations, for it is by no means sure that a levy on the "consumption" of works out of copyright will everywhere be considered desirable. It would, however, bring money into the welfare funds, and hence might give living authors the impression of greater security.

Mr. Reinhardt further suggests a provision to protect the author against the risk of contracts which might become leonine under certain circumstances. If the user makes profits out of the work that are out of all proportion to the lump sum he paid to the author, the latter should be able to claim *a posteriori* a fair additional fee. (In what form? A fixed sum, or a share in profits? The second solution is in my view more satisfactory. Is this Mr. Reinhardt's idea? I think so, but am not absolutely sure.)

These few lines have hardly touched upon the wealth of information and thinking from the pen of our young doctor from Freiburg-im-Breisgau. He is a credit to his teachers and to the venerable academic traditions of the German universities. The earth has kept its fertility, and nurtures a new and hardy plant. An auspicious sign indeed.

B. M.

LATE NEWS

At the moment of going to press, we hasten to announce, however briefly, the following two appointments which have just been brought to our notice.

France. — Mr. Raymond Janot, Secretary-General of the French Community, has been appointed Director-General of the Radiodiffusion-Télévision Française in succession to Mr. Christian Chavanon who is leaving to take up other functions.

Switzerland. — Mr. Hans Oprecht, who is a National Councillor (Member of Parliament), has been appointed Central President of the Société Suisse de Radiodiffusion in place of Mr. Willy Spühler, recently elected Federal Councillor (Minister of the Government).

In Part A — (Technical) of E.B.U. Review No. 60 you will find:

the last three articles of the series published already in Nos. 58-A and 59-A, dealing with new methods of calculating television frequency assignment plans:

the first of these, by H. EDEN, K. KALTBEITZER and H. FASTERT, describes a new conception of a television plan, taking into account only the minimum spacings between the stations;

the second, by H. FASTERT, gives the mathematical foundations of the study of regular networks with linearly distributed channels;

the third, by F. MAARLEVELD, deals with the possibility of adopting non-linear distributions;

numerous news items concerning the technical activities of sound and television broadcasting services, describing notably the broadcasting situation in the Belgian Congo, the present state of the work of the National Stereophonic Radio Committee in the United States, the television coverage of mountainous regions of France by low-power satellites, the studios of the Finnish Television Service, the development of television in Nigeria, wire-broadcasting in the United Kingdom, recent television installations of the BBC and ITA, directional microphones developed by the NRU and the Swedish sound and television broadcasting station at Hörby;

the changes that have occurred in the long, medium and VHF (Band II) broadcasting bands in Europe up to 1st March, 1960;

a chart showing the occupation of the television bands I, III and IV in Europe as on 1st March, 1960;

brief accounts of recent meetings of EBU Working Parties S (stereophonic broadcasting) and L (international television relays).

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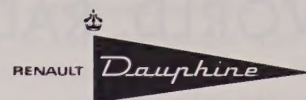
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Fantastic figures



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Deliveries 1957 240	Deliveries 1957 989	Deliveries 1957 4789	Deliveries 1957 33797	Deliveries 1957 2726	Deliveries 1957 1159
Deliveries 1958 6570	Deliveries 1958 2609	Deliveries 1958 10432	Deliveries 1958 61900	Deliveries 1958 4258	Deliveries 1958 2716
Increase 2637%	Increase 154%	Increase 107%	Increase 83%	Increase 56%	Increase 134%

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